

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921

No. 202

GREAT NORTHERN RAILWAY COMPANY AND JOHN
BARTON PAYNE, DIRECTOR GENERAL OF RAILROAD,
PETITIONERS.

vs.

MERCHANTS ELEVATOR COMPANY.

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE
OF MINNESOTA.

PETITION FOR HABEAS CORPUS FILED JANUARY 17, 1922
HABEAS CORPUS AND RETURN FILED MARCH 24, 1922

No. 686.

GREAT NORTHERN RAILWAY COMPANY AND JOHN
BARTON PAYNE, DIRECTOR GENERAL OF RAIL-
ROADS, PETITIONERS,

vs.

MERCHANTS ELEVATOR COMPANY.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MINNESOTA.

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21910.

State of Minnesota, in Supreme Court, 1920.

MERCHANTS ELEVATOR COMPANY, Respondent,

vs.

GREAT NORTHERN RAILWAY COMPANY, AND
United States Railroad Administration, Walker
D. Hines, Director General of Railroads, ap-
pellants.

RECORD.

M. L. Countryman and F. G. Dorety, St. Paul, Minnesota.

Dille, Hoke, Krause & Faegre, 300 Security Building, Minneap-
olis, Minneasota, attorneys for appellants.

Harold G. Simpson, 630 First Nat'l-Soo Line Building, Minneap-
olis, Minnesota, attorney for respondent.

State of Minnesota, in Supreme Court, 1920.

State of Minnesota, Municipal Court, county of Hennepin, city of
Minneapolis.

MERCHANTS ELEVATOR COMPANY, PLAINTIFF,

vs.

GREAT NORTHERN RAILWAY COMPANY, AND
United States Railroad Administration, Walker
D. Hines, Director General of Railroads, de-
fendants.

COMPLAINT.

Now comes the plaintiff in the above-entitled action and alleges
and shows to the court as follows:

I.

That plaintiff is a corporation duly organized and existing under
the laws of the State of Minnesota, with its principal office at
Minneapolis, Minnesota.

II.

That the Great Northern Railway Company was at all times herein
mentioned and still is a duly organized corporation. That de-
fendants own and operate lines of railroad within the State
of Minnesota as well as many other States, and that said de-
fendants were, at all times herein mentioned, and still are,
common carriers of goods for hire.

III.

That heretofore there were certain cars of corn shipped from certain points billed to Willmar, Minnesota, as more fully set forth in Exhibit "A" hereto attached and hereby made a part of this complaint. That all of said cars were billed to Willmar, Minnesota, in order that the grain therein could be sampled and graded, in accordance with the laws of the State of Minnesota and in accordance with the practice of the defendants herein. When said cars had been sampled and graded, the plaintiff herein ordered them delivered to Anoka, Minnesota, upon which orders the defendants herein acted, and said cars were so delivered to Anoka, Minnesota.

IV.

Plaintiff further alleges that said defendants illegally, contrary to their duly published tariffs, contrary to the rules of the Railroad and Warehouse Commission of the State of Minnesota and the Interstate Commerce Commission and contrary to law, arbitrarily collected from plaintiff five dollars (\$5.00) on each of said cars in excess of the lawful freight charges. That said charge of five dollars (\$5.00) so collected by defendants and paid by plaintiff was illegal, arbitrary, and unlawful. That the plaintiff was obliged to and did pay
3 to the defendants on each of said carloads of grain such excessive and unlawful charge without, however, in any instance consenting to the payment of said charges, and without in any way waiving or agreeing to waive their claims against the defendants for a refund of such charges so unlawfully exacted.

V.

That hereto attached is a schedule marked Exhibit "A," showing in detail the facts concerning each of said cars. Said schedule and the facts therein stated, are incorporated herein, and made a part hereof. That the date of shipment is shown in said schedule in the column under the caption "Date of shipment." The car number and initial are shown in the column under the caption "Car No. and initial." That the point of origin is shown in the column under the caption "Point of origin." That the date of payment is shown in the column under the caption "Date of payment." That the amount collected is shown in the column under the caption "Amount collected."

VI.

That all of the said cars were billed to and shipped to the plaintiff herein. That the plaintiff was the owner of said grain, and that plaintiff paid the freight on said shipment and all other lawful charges.

VII.

That by reason of the foregoing facts the defendant became indebted to the plaintiff in the sum of eighty dollars (\$80.00). That the plaintiff has duly demanded from the defendants payment and refund of said sum, but that notwithstanding such indebtedness and demand, the defendants have refused and wholly failed to pay said sum or any part thereof.

Wherefore, the plaintiff prays judgment against the defendants for the sum of \$80.00, together with interest thereon, at the rate of six per cent (6%) per annum, from the date of payment of said charges, together with a reasonable attorney's fee, together with plaintiff's costs and disbursements herein.

HAROLD G. SIMPSON,
Attorney for Plaintiff,
1012 Security Building,
Minneapolis, Minnesota.

EXHIBIT "A."

Date of ship't.	Car No. & initial.	Point of origin.	Date of pay't.	Am't collected.
8/2/18	M. H. 79564	Council Bluffs, Iowa	8/24/18	\$5.00
8/20/18	D. R. G. 66027	" " "	8/27/18	"
8/8/18	M. H. 85554	" " "	8/28/18	"
8/12/18	N. Y. C. 208119	Omaha, Neb.	8/28/18	"
8/8/18	Pa. 40371	Council Bluffs, Iowa	8/26/18	"
8/13/18	I. C. 172472	Omaha, Neb.	8/29/18	"
8/13/18	I. C. 21133	Council Bluffs, Iowa	8/29/18	"
8/7/18	G. T. 25357	" " "	8/24/18	"
8/6/18	Mo. P. 31724	" " "	8/24/18	"
7/27/18	Big 4-6195	" " "	8/13/18	"
8/7/18	B. M. 1300	" " "	8/24/18	"
8/7/18	P. & E. 45929	" " "	8/24/18	"
8/6/18	C. G. W. 22222	" " "	8/24/18	"
7/30/18	A. C. L. 43725	" " "	8/16/18	"
7/11/18	C. R. G. & P. 44344	" " "	8/20/18	"
7/30/18	G. T. 102796	" " "	8/19/18	"

(Title of cause.)

SEPARATE ANSWER OF DEFENDANT GREAT NORTHERN RAILWAY COMPANY.

Comes now the defendant, Great Northern Railway Company, and for its separate answer to the complaint of the plaintiff herein:

1. Denies each and every allegation, matter, and thing in said complaint contained except such as may be hereinafter expressly admitted.

Wherefore, this defendant prays that plaintiff take nothing and that this defendant may be hence dismissed with its costs and disbursements herein.

COBB, WHEELWRIGHT & DILLE,
Attorneys for Defendant, Great Northern Railway Company,
311 Nicollet Avenue, Minneapolis, Minnesota.

(Title of cause.)

SEPARATE ANSWER OF WALKER D. HINES, DIRECTOR GENERAL OF RAILROADS.

Comes now the defendant, Walker D. Hines, Director General of Railroads, operating the Great Northern Railway, and for his separate answer to the complaint of the plaintiff herein:

1. Denies each and every allegation, matter, and thing in said complaint contained except such as may be hereinafter expressly admitted.

2. Admits the allegation contained in paragraph 1 of said complaint and admits that at the times mentioned in said complaint the said Great Northern Railway was being operated by the Director General of Railroads of the United States of America.

Wherefore, this defendant prays that plaintiff take nothing and that this defendant may be hence dismissed with his costs and disbursements herein.

COBB, WHEELWRIGHT & DILLE,
Attorneys for Walker D. Hines, Director General of Railroads,
311 Nicollet Avenue, Minneapolis, Minnesota.

(Title of cause.)

SETTLED CASE.

The above entitled case came on for trial before Hon. Mathias Baldwin, without a jury, on the 24th day of October, 1919.

Mr. Harold G. Simpson appeared on behalf of the plaintiff, and Messrs. John Benson and John F. Finerty appeared on behalf of the defendants.

The following proceedings were had and the following testimony introduced:

Mr. SIMPSON. May it please the court, this is a so-called over-charge case, involving the construction of a tariff. I realize that it is a difficult one for any court or any lawyer, outside of an expert traffic man, to handle or to understand it. For that reason I think I had better make a statement to the court as to what is involved, as nearly as I can, state the facts.

7 This action involves sixteen cars. These cars originated down at Sioux City, Iowa, Council Bluffs and Omaha, the so-called corn district. I believe they are all cars of corn. They were billed to Willmar, Minnesota, which the court will remember is an official sampling point in the State of Minnesota, on the Great Northern Railroad, and they were billed to that point for the purpose of official inspection. There were reasons for that. We will show that the plaintiff in this case sold quantities of corn to be shipped to several different points, some to Anoka—I think these cars went to Anoka—some to St. Cloud and some to Minneapolis. They would

sell, say, 300,000 bushels of No. 3 corn to be shipped to Anoka, the same to be based on Minnesota grades, and they were billed to Willmar for the purpose of determining what the grade was; because if it was No. 4 it went to St. Cloud, if it was No. 3 it went to Anoka, and if No. 5 or No. 6 it went to Minneapolis. When these cars reached Willmar the State made its official inspection and notified the plaintiff what the grade was. The plaintiff then ordered these particular cars to Anoka, Minnesota. They made that order, as we will show, by surrendering their original billing and getting new billing. The Great Northern, as shown on their freight bills, on each one of these cars charge \$5 for this so-called reconsignment and the plaintiff in this case claims that that was an illegal charge.

It should be understood that we are not attacking the rate as unreasonable or discriminatory or prejudicial, or anything of that kind, because if we were I admit we would first have to go before the Interstate Commerce Commission. Our position is simply this: That by the terms of the tariff which was in force at that time, there was no authorized or legal charge, such as this, and the Great Northern made this charge without proper authority, and therefore we are entitled to the refund.

The tariff involved is: "G. N. Ry. G. F. O., No. 1240-A" and Supplement No. 1 thereto. I will not argue as to our reasons now. But that tariff, effective May 1, 1918, was, by order of the Interstate Commerce Commission (or a certain part of it) suspended, and by Supplement No. 1 of the same date, May 1, 1918, the Great Northern Railway issued a supplement of one page canceling certain portions of that tariff.

These cars, I might say, moved in August, 1918, while the suspension was still in force. It is our contention that the reconsigning of these cars was suspended, that is, the five-dollar rule was suspended. It is the contention of the Great Northern that the charge of five dollars was still in effect. And the only question, as far as I know, in this case is simply what the tariff provides, and we will try to explain that by experts who are a great deal more familiar with tariffs than I am, so that the court can see our position, and I presume the Great Northern can do the same.

The COURT. Was this one single shipment?

Mr. SIMPSON. No, there are sixteen, I think. There is a schedule there.

9 The COURT. Just one cause of action, however, isn't it?

Mr. SIMPSON. Yes.

Mr. FINERTY. The same question, exactly, is involved in all of them?

Mr. SIMPSON. Yes; the cars were handled exactly in the same way, and there is just one cause of action involved.

Mr. BENSON. They all originated at Iowa points?

Mr. SIMPSON. Yes; they are interstate shipments.

The COURT. The point I am getting at is, they are really separate causes of action for each car; isn't that it?

Mr. BENSON. We don't object to that.

Mr. SIMPSON. I will call Mr. Barwin as a witness.

J. E. BARWIN, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Examined by Mr. SIMPSON:

Q. Your name is what?

Mr. FINERTY. Before the testimony is offered, may it please the court, I wish to move the court to dismiss this action on counsel's statement, on the ground that counsel's statement, as well as the complaint filed herein, shows that the question involved is a question of the construction of an interstate tariff filed with the Interstate Commerce Commission, and that that question is one within the exclusive jurisdiction of the Interstate Commerce Commission.
10 under the decisions of the United States Supreme Court, in the case of Texas & Pacific Railway Company v. American Tie & Timber Company, Ltd., 234 U. S., 138, and Loomis v. Lehigh Valley Railroad Company, 240 U. S., 43.

In those cases the United States Supreme Court held that, of necessity, a question of tariff construction must, in the first instance, be within the exclusive jurisdiction of the Interstate Commerce Commission, because, otherwise, the effects of the act to regulate commerce, which is intended to obtain uniformity in the application of rates, would be impossible.

If each court were to construe a given tariff according to the idea of the particular court as to what it meant, it would mean that in this court the tariff would be construed one way and a court in Iowa it would be construed in another, or in the courts of the same State it might be construed in several different ways. The result would be that the uniformity of rates required by the interstate commerce act would be impossible, as each court, in applying its own construction of the rate, would automatically change the rate on every shipment brought before the court.

To avoid that situation, the United States Supreme Court holds, in the cases to which I have referred, that the matter must first be referred to the Interstate Commerce Commission for its construction of the tariff. When that construction is made, at the suit of any shipper, all shippers generally throughout the United States using that tariff or shipping under that rate may take advantage of that construction and may sue in any court of competent jurisdiction in the United States, but until that construction is made, the matter is not one of which a court can take original jurisdiction. The construction placed by the Interstate Commerce Commission on the tariff, under the decision of the Supreme Court of the United States, becomes an award, upon which any shipper throughout the United States can sue. The result is that the Interstate Commerce Commission, being the body charged by the interstate commerce act with the policing of interstate tariffs,

with regulating the manner in which they shall be filed, and their contents, is in a position to make a uniform construction, uniformly applicable throughout the United States, so that all shippers will pay exactly the same rates, and thus avoid the situation which would arise if any court were permitted to construe the tariff—that one shipper in one place would pay a certain rate and on an opposite construction of the tariff another shipper in another place would pay a different rate. The great object of the interstate commerce act was to prevent that very thing and to obtain uniformity of rates as to all shippers.

I, therefore, ask the court to dismiss this case at this time, because, the complaint fails to show any award by the Interstate Commerce Commission and because, as Mr. Simpson stated, the question involved is necessarily the construction of an interstate tariff.

12 Mr. SIMPSON. I thought this question had been pretty well settled, but Mr. Finerty does not seem to agree with me. I have merely brought in here two cases. I cite the cases which Mr. Finerty relies on for the opposite proposition. I also have a case, involving exactly the same point, in the Minnesota Supreme Court, which is exactly to the opposite of Mr. Finerty's contention. The first one is National Elevator Company v. Chicago, Milwaukee & St. Paul Railway Company, 246 Fed., 588. The other one is Reliance Elevator Company v. Chicago, Milwaukee & St. Paul Railway Company, 139 Minn., 69. I believe all the cases are summed up, and both decisions are very clear. One of the cases in the Supreme Court I argued myself and briefed the proposition in this jurisdiction, and both practically hold that it is a question of construction. That is where the cases differ. We are not attacking the rate as unreasonable, or saying this rate ought to be put out of effect. We are simply saying that under the tariff you have published, the rate is illegal, and it is purely a question which the court has jurisdiction to determine.

Mr. FINERTY. The case of the American Tie & Timber Company, with which Mr. Simpson may or may not be familiar, and which may or may not be cited in those cases—I haven't seen the decision, and I can't say—is a case of construction and has nothing to do with the reasonableness or the discriminatory character of the rate. The sole question involved in that case and the flat decision of the

13 Supreme Court was that in a case of tariff construction the question was for the decision of the Interstate Commerce Commission in the first place, and that decision being made then suit might be brought in court. It is not a question of ousting a court of jurisdiction; it is a question of the necessary condition precedent to an action in court, which court otherwise would have no jurisdiction of the question.

The COURT. Supposing a tariff should be published as to certain freight shipments and a charge should be made which was in excess of the charges published. Would that have to go to the Interstate Commerce Commission for decision?

Mr. FINERTY. The answer I will make, may it please the court, is the logical answer, and your honor is right in presuming that my theory would go that far, and I would say yes, it would have to. But that question does not arise here.

The COURT. What I was trying to get at was the general principle which ought to govern every case, if possible.

Mr. FINERTY. Yes; and your honor is entirely correct in assuming that I would go that far, although it is not necessary in this case, because that question does not arise here. It will develop before your honor that in this case there are two tariff provisions, one of which was suspended. The question before the court is which of those tariff provisions, or, rather, under which tariff provision this charge was made. There is, we contend, a specific tariff provision under which this charge was authorized and made, and there is

another tariff provision which we contend is inapplicable to 14 these shipments and which was suspended, and under which,

admittedly, no charge could have been made. Therefore, it is not a case where plainly on the face of the tariff there was no authority for the charge. Now, I may say that if we came into court with a tariff that said a charge of five dollars shall be made on a given shipment, and we charged six dollars, I would not contend that the Interstate Commerce Commission had still to be consulted before the court would have jurisdiction. There would be something that would, by the terms of the tariff itself, be fixed—a charge of five dollars. No court in the land, presumably, would say that in that case a charge of six dollars ought to be made or a charge of four dollars. Therefore, the necessity of uniformity would not be in question, which is the sole condition upon which the Supreme Court holds the Interstate Commerce Commission can act. That is where the question involved necessarily goes to the uniformity of the rates, and the Interstate Commerce Commission must decide that question, because otherwise there would be varying decisions in various courts. If you have a rate on its face plainly five dollars and we should charge six dollars, and Mr. Simpson should come into court to collect the extra dollar paid, I would concede without hesitancy that this court would have jurisdiction of such a suit, without any finding by the Interstate Commerce Commission. I just want for a minute to refer you to the American Tie & Timber Company case.

15 Mr. SIMPSON. That case is considered in both of these cases.

The COURT. So far as counsel have indicated, the precise question does not seem to be a construction of the tariff, but to determine whether or not any charge should be made.

Mr. SIMPSON. It is, just as Mr. Finerty said, to determine whether it was nothing or five dollars; that is all there is to it. We say there is no charge. He says there is a five-dollar charge.

The COURT. That depends on whether the modification was in effect?

Mr. FINERTY. No; it depends on this, your Honor, if I may point out specifically what is involved here—and that is the question whether this charge is made under rule 10 of Great Northern Tariff No. 1240-A.

Mr. SIMPSON. I think you will find it on the bottom of page 3 of his tariff. They claim this applies to this shipment, and we claim, under our construction, it does not. There are other provisions here—

Mr. FINERTY. Or was it a charge made under this provision on page 4 of the same tariff, headed, "Rules and charges governing grain, seed (field), seed (grass), hay, or straw, carloads, held in cars on tracks for inspection and disposition order incident thereto billed for destination or at point intermediate thereto." Mr. Simpson's contention is that this is a shipment under which the latter rule is applicable, and therefore no charge is to be made. Our contention is that rule 10 on page 3 is the applicable rule, and therefore a five-dollar charge should be made. The question involved, therefore, is whether the tariff should be construed as making rule 10 applicable or as making the exception on page 4; and it must be obvious to the court that if this court holds that the exception is applicable—if this court should hold that rule 10 is applicable and that a five-dollar charge must be made here, and some other shipper, represented by Mr. Simpson, goes into the District Court of Iowa or the District Court of Nebraska, on exactly similar shipments, and that court should hold that the exception to the rule is applicable, that shipper would get the same shipment made for five dollars less, destroying the uniformity of the application of rates, which is the object of the interstate commerce act to provide against and which is the sole basis upon which the Supreme Court holds that the Interstate Commerce Commission must have original jurisdiction.

Our position is not because of any disinclination to submit the controversy to this court. This court is undoubtedly as competent to say which of these two rules applies as is the Interstate Commerce Commission, but that same concession must be made as to any other court before whom the question is raised, and obviously there may be some differences of opinion among forty or fifty different courts.

The COURT. And between the judges of this court.

Mr. FINERTY. Yes, exactly. It might come up before some other judge of this court and a different construction be made, and therefore you would have the extraordinary situation that in interstate tariff, supposed to provide a uniform rate applicable to all shippers alike, would in one court be applied in one way, making a shipper pay five dollars, and in another court applied in another way, under which the shipper would escape the five-dollar payment. It seems to me perfectly self-evident that the reason upon which the American Tie Company case proceeds is the reason which should appeal to this court.

I am not familiar, I confess, with the cases which Mr. Simpson cites. They are cases of subordinate courts, but I can say this, that in those cases—and I doubt if Mr. Simpson has correctly construed those cases—if those cases construed the American Tie Company case as passing off on the question of the reasonableness or the discriminatory character of a rate, they are contradicted by the very words of the court itself, which expressly comments on the fact that the question there involved is the construction of the tariff and that that question of all others should be uniformly decided.

(After further argument the court said he would receive the testimony, subject to the objection.)

Examined by Mr. SIMPSON:

Q. Your name is what?

A. J. E. Barwin.

Q. And what is your position or occupation?

A. In charge of traffic on the Merchants Elevator Company.

Q. The plaintiff in this case?

18 A. Yes, sir.

Q. And how long have you been so employed?

A. With the Merchants Elevator Company about two years.

Q. In general, what is the nature of your duties there?

A. Handling traffic matters.

Q. You have general supervision of the movement of traffic and anything that pertains to the railroads?

A. Yes, sir.

Q. And whatever is done there is done under your jurisdiction or supervision or orders?

A. Yes, sir.

Q. Anything that pertains to the service?

A. Yes, sir.

(A package of Great Northern Railway freight bills, consisting of 16 in number, was marked "Plaintiff's Exhibit A.")

Q. Showing you plaintiff's Exhibit A, composed of 16 pages of bills, I will ask you to state what they are, just in a general way.

A. They are the bills covering particular charges—

Q. Well, they are railroad expense bills?

A. Yes, railroad expense bills.

Q. And presented to the company and paid by your company to the Great Northern Railroad Company?

A. Yes, sir.

Q. And they show the point of origin, dates, consignees, point of destination, and so forth?

19 A. Yes, sir; they do.

Mr. SIMPSON. I offer plaintiff's Exhibit A in evidence.

Mr. FINERTY. These are the originals?

Mr. SIMPSON. Yes.

Mr. FINERTY. No objection.

The COURT. Received. These cover the cars described in the complaint, I suppose.

Mr. SIMPSON. Yes; they cover the cars described in the complaint. For the purpose of showing the form of these documents, the first of the freight bills is here copied into the record and is as follows:

Great Northern Railway.	Freight bill.	Form 7.
	1602 Anoka, Minn.,	Station, Aug. 16, 1918.
Consignee Order Merchants Elev.	Freight bill	No. 150.
Destination Notify Pillsbury Flour Mill Co.		
Route C. B. & Q. Sioux City Gn.		
(Point of origin to destination.)		
To Great Northern Railway Company, Dr., for charges on articles transported:		
Waybilled from Council Bluffs.	Waybill date and No. July 31-18, 5004.	Full name of shipper Omaha Elev. Co. Car initials and No. C. R. I. & P. 44344.
Point and date of shipment.	Connecting Line reference.	Previous waybill ref- erences. Original car initials and No. Advances total.
Number of packages. Articles and marks. Bulk corn.	Weight. 86790	Rate. 20
		Freight. 173.58 5.00 <hr/> 178.58
		R/C. Willmar.

(In pen:) CK 15341.
(Stamp:) Great Northern Ry. Co.
Accounting Dept. Correct Freight Receipts Division (Stamp) G. N. 137788.
*Total, prepaid, \$.....
Received payment Aug. 20, 1918. Total freight, 178.58.
M. F. Shepherd agent War tax 5.36
Per.....Cashier Total 183.94

*For use at junction points on freight subject to connecting line settlement.

(On back of:)

Rules.

1. This form must be prepared with typewriter, or pen and ink, all information called for to be shown in full and in a clear and legible manner.
2. Weight, rate, and charges must be shown in detail for less car-load shipments.
3. Demurrage, switching, icing, or other miscellaneous charges not included in the rate for transportation must be stated in detail, and the points at which such charges accrued shown.
4. When charges are assessed on track scale weights, gross tare, and net weights on which charges are based and name of weighing station must be shown.
5. The route over which the shipment moved from point of origin to destination, including the initials of each carrier and name of each connecting line junction point, must be shown.
6. Overcharges will be refunded only on presentation of original paid freight bills.

7. Original paid freight bills should accompany claims for overcharge, loss, or damage.

8. All freight will be subject to demurrage or storage charges, or both, as provided in published tariffs.

(Stamp :) Mail desk 1918, Aug. 21, a. m. 8.34.

PILLSBURY FLOUR MILLS COMPANY,
Minneapolis.

21 Q. Calling your attention to the column "Freight," there is a charge on each one of these marked \$5.00, is there not?

A. Yes, sir.

Q. Besides the amount of the freight. And opposite that is written R/C. Willmar. I will ask you if you know what that means?

A. It means reconsigning charge assessed at Willmar.

Q. That is, in each case \$5.00, and is in each case in addition to the freight?

A. Yes, sir.

A package of papers, consisting of 32 sheets, was marked "Plaintiff's Exhibit B."

Q. Showing you plaintiff's Exhibit B, composed of 32 pages, or sheets, I will ask you to state what they are?

A. The smaller certificate on here is the grain inspection certificate, which inspection is made by the Minnesota State grain inspection department at Willmar, Minnesota, and the larger certificate on here is a copy of the original waybill that was surrendered in lieu of the waybill issued at Council Bluffs—

Mr. FIXERTY. You mean bill of lading?

WITNESS. Yes; bill of lading—at point of origin, and reconsigning the cars from Willmar to their destination.

Q. Signed in each case by your company and the railroad agent?

A. Yes, sir.

22 Mr. SIMPSON. I offer plaintiff's Exhibit B in evidence. If you have the originals I will put them in.

Mr. FIXERTY. I haven't them here. May it be admitted that these shipments originally were billed to Willmar, from the points of origin to Willmar, Minnesota?

Mr. SIMPSON. I think that appears on the freight bills. Yes; it is admitted that the original billing was from the points of origin to Willmar, Minnesota. These bills I am putting in are the bills used for reconsigning from Willmar to Anoka.

Mr. FIXERTY. And, as stated on the face of these bills of lading, are issued in exchange for the original bills of lading.

Mr. SIMPSON. Yes.

Mr. FIXERTY. No objection.

The COURT. Received.

Mr. FIXERTY. Mr. Simpson, just to make the record clear, the original bills of lading were Chicago, Burlington & Quincy Railroad bills of lading, identical in all respects with these bills of lading except that the cars were consigned to Willmar instead of from Willmar to Anoka.

WITNESS. Yes; it is so stated on these bills of lading that they were issued in exchange.

Mr. SIMPSON. It says, "Issued in exchange for bill of lading * * * by the agent of Q."

For the purpose of showing the form of plaintiff's Exhibit B, which are sheets in groups of two, the first and second sheets are here copied into the record, and are as follows:

23

PLAINTIFF'S EXHIBIT B.

N.F.191 B. State of Minnesota.

Grain Inspection Certificate.

83485.

Minnesota State Grain Inspection Department.

Minneapolis, Minnesota, 8-16-1918.

I hereby certify that I hold a license under the United States grain standards act to inspect and grade the kind of grain covered by this certificate; that on the above date I inspected and graded the following lot or parcel of grain, and that the grade thereof, according to the official standards of the United States, is that stated below:

Car No. 79564. Car initial, N. H. Location, Gt. Nor. Ry.

Willmar. Amount, 1 car. Kind, corn. Grade, 3 White.

Dockage %, ----- Analysis ----- pounds ----- per bushel and percentages

Pounds per bu.	Moisture content	Other classes (following columns blank). Hard Red Spring; Hard Red Winter; Soft Red Winter; Common White; White Club; Durum.
53.	11.2%.	

Damaged
Other than heat
44%.

G. H. Tunell,
Chief Grain
Inspector of
Minnesota, St.
Paul, Minnesota.
(Seal.)

(Other columns blank.)

Richard Gibbs,
Chief Deputy
Inspector of grain,
Minneapolis, Minn.

Remarks-----
E. G. Johnson,
Licensed Inspector,
Per F. W. W.

(Printed on back:)

This certificate is valid for "In" inspection, but not for "Out" inspection except when shipment is made in same car not later than close or second business day after date hereof and without removal of grain or any change in its identity.

Stamped on face: 3rd copy.

24 Stamped across face: See reverse side.

Sheet 2. New Form 82.

For use in connection with the standard form of order bill of lading approved by the Interstate Commerce Commission.

Order No. 787 of June 27, 1908.

Amended to conform to the Cummins amendment to interstate commerce law. Great Northern Railway Company

Shippers No. -----

Agents No. -----

This memorandum is an acknowledgment that a bill of lading has been issued and is not the original bill of lading, nor a copy or duplicate, covering the property herein named, and is intended solely for filing or record.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the original bill of lading, at Willmar, Minn. -----, 19-----, from Merchants Elevator Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time
25 interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of the original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The rate of freight from ----- to ----- is in cents per 100 lbs. (followed by black columns).

Consigned to order of Merchants Elevator Co.

Notify Pillsbury Mills Co.

Destination: Anoka, State of Minn., County of -----

Route ----- Car initial, N. H. Car No. 79564.

No. ----- Description of articles ----- Weight ----- Packages, and special marks. (Subject to correction.)

Corn

66000

60 Cap. Car.

(Following columns blank.) "Class or rate": "Check column":
"If charges are to be prepaid, write or stamp here." "To be prepaid":
----- "Received \$----- to apply in prepayment of the charges on
the property described hereon ----- Agent or cashier. Per -----
(The signature here acknowledged only the amount prepaid.)

"Charges advanced: At ----- For ----- \$-----
26 (Stamp at top of document) United States Railway Administration, etc.

Stamped at bottom: This bill of lading is issued in exchange for bill of lading No. ----- issued at Co. Bluffs, Ia., on the 1 day of August, 1918, by the Agt. of Q. Ry.

Also stamped: This b/l issued in exchange for original on file in office of G. A. G. N. Ry., Minneapolis, Minn.

Also stamped: Received August 10, 1918, general agent, Minneapolis, Minn. P. E. Weay, agent.

Merchants Elev. Co. Shipper

Per J. E. S.

(Printed conditions on back of document.)

Q. Calling your attention to the dates on the certificate of inspection, I will ask you if you know what those dates stand for?

A. They are the dates that the inspection was made.

Q. And then calling your attention on the bills of lading to the stamp "Received," with the date in it, I will ask you if you know what that is?

A. That is the date that the agent of the Great Northern signed the new bill of lading in exchange for the original.

Q. You filed these on that day?

A. Yes, sir.

Mr. SIMPSON. I think it appears clearly they were filed on the date of inspection.

Q. I will ask you, Mr. Barwin, do you know whether or not the station of Wilmar is a station where the State of Minnesota makes official inspection?

A. They do; yes, sir.

Q. That is a regular official inspection station on the Great Northern, and all grain passing through there is sampled by the State of Minnesota and by other bureaus, and so forth?

A. Yes, sir.

Q. I will ask you if this \$5.00, or any part thereof, on each one of these Exhibit A, has been paid or refunded?

A. No, sir; it has not.

Q. You had general supervision, did you, of the way these cars were billed—that is, they were billed under order; they were billed to Willmar?

A. Yes, sir.

Q. Will you state why that was done?

A. In order to secure Minnesota State inspection.

Q. For what purpose?

A. For filling sales.

Q. Will you describe a little more fully what you mean by that?

A. These cars moved at a time when they were milling a good deal of corn in the north here, and we went in the Omaha market and bought corn, and we bought it on the basis of Omaha weights and Omaha inspection, and in order to sell the commodity to the millers in the Northwest here we had to sell it on the basis of Minnesota State inspection, and for that reason, before we could give final disposition of the cars we had to move the cars to a common sampling or inspection point.

Q. And when the grade was determined, then you ordered them to wherever that particular car would fill a particular sale?

A. Yes, sir.

A Great Northern Railway Company tariff, "G. F. O. No. 1240-A," was marked "Plaintiff's Exhibit C."

Q. Showing you plaintiff's Exhibit C, I will ask you to state what that is.

A. This is a Great Northern tariff covering the local and joint rules and charges governing diversion or reconsignment of carload freight.

Mr. BENSON. What is the number of it?

Q. Number 1240-A; is that correct?

A. Yes, sir.

Q. Great Northern number. What is the I. C. C. number?

A. I. C. C. No. A-4524.

Mr. SIMPSON. Plaintiff offers in evidence plaintiff's Exhibit C under an agreement with counsel that the tariff need not be certified to.

The COURT. Received.

Plaintiff's Exhibit C is as follows:

Only one supplement to this tariff will be in effect at one time.

G. N. Ry. W. P. S. C. No. 658. Cancels conflicting portions of G. N. Ry. W. P. S. C. No. 566.

G. N. Ry. N. D. R. C. No. 41. Cancels conflicting portions of G. N. Ry. N. D. R. C. No. 34.

G. N. Ry. I. C. C. No. A-4524. Cancels reconsigning rules and charges shown in Part A, pages 33, 34, and 35 of G. N. Ry. I. C. C. No. A-4295, as amended on pages 4, 5, and 6 of Supplement No. 1 to G. N. Ry. I. C. C. No. A-4295, except in so far as they apply on fresh or green fruits, fresh or green vegetables (including potatoes and onions), fresh berries and melons; and except in so far as they apply on coal and coke as shown on pages 5, 6, and 7 hereof.

G. N. Ry. G. F. O. No. 1240-A. Cancels reconsigning rules and charges shown in Part A, pages 33, 34, and 35 of G. N. Ry. G. F. O. No. 440-B as amended on pages 4, 5, and 6 of Supplement No. 1 thereto, except in so far as they apply on fresh or green fruits, fresh or green vegetables (including potatoes and onions), fresh berries and melons; and except in so far as they apply on coal and coke as shown on pages 5, 6, and 7 hereof.

Great Northern Railway Company.
Watertown & Sioux Falls Ry. (FX 2, No. 13).
G. F. D. No. 3416.

Local and joint tariff naming rules and charges governing diversion or reconsignment of carload freight at stations on the above named lines except on intrastate traffic in Minnesota, South Dakota, Wisconsin, Iowa, Montana, and Idaho.

Issued April 23, 1918.

Effective May 1, 1918.

The rules and charges governing diversion and reconsignment contained in this schedule are filed on five days' notice under authority

of the Interstate Commerce Commission's Fifteenth Section Order No. 499 of March 26, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Issued under authority of Order No. 3092 of the Washington Public Service Commission.

H. H. BROWN,
Assistant Traffic Mgr. Great Northern Ry. Co.,
St. Paul, Minn.

M. J. COSTELLO,
Assistant Traffic Mgr. Great Northern Ry. Co.,
Seattle, Wash.

Issued by P. H. Burnham, General Freight Agent, Great Northern Ry. Co., St. Paul, Minn.

Rules and charges governing the diversion or reconsignment of carload freight.

Application.

Freight in carloads, except as provided below, may be diverted or reconsigned on this company's lines, subject to the following rules, regulations, and charges.

If request is made for the diversion or reconsignment of freight, in carloads, this company will make diligent effort to locate the shipment and effect diversion or reconsignment, but will not be responsible for failure to effect the diversion or reconsignment desired unless such failure is due to the negligence of its employees.

Definition.

For the purpose of applying these rules, the term "Diversion" or "Reconsignment" means:

- (a) A change in the name of the consignee.
- 31 (b) A change in the name of the consignor. (See rule 6.)
- (c) A change in destination. (See rule 5.)
- (d) A change in route at the request of consignor, consignee, or owner.
- (e) Any other instructions given by consignor, consignee, or owner necessary to effect delivery which requires a change in billing or an additional movement of the car, or both. (See section (d) of exceptions.)

Conditions.

The services herein authorized are subject to the following conditions:

- (a) That shipments have not broken bulk.

(b) Orders for diversion or reconsignment will not be accepted under these rules at or to a station or to a point of delivery against which an embargo is in force.

(c) On "straight consignments the original bill of lading should be surrendered or other proof of ownership established. On shipments consigned "to order" original bill of lading should be surrendered, or in its absence, satisfactory bond of indemnity executed in lieu thereof, or other approval security given at the time the diversion or reconsignment order is placed.

(d) Request for diversion or reconsignment must be made or confirmed in writing.

(e) Prepayment or guarantee of charges: All charges accruing under these rules must be paid or guaranteed to the satisfaction of the carrier by the person or persons requesting the diversion
32 or reconsignment or reforwarding before shipments are forwarded.

Exceptions.

These rules will not apply to—

(a) Grain, hay, straw, or grass and field seeds held or stopped for official inspection. (See page 4.)

(b) Fresh or green fruits; fresh or green vegetables (including potatoes and onions); fresh berries and melons.

(c) Coal and coke (not including petroleum coke).

For rules and charges governing the diversion or reconsignment of coal and coke, at St. Paul, Minneapolis, Minnesota Transfer, Duluth, Minn., Superior, Allouez, Wis., also all stations on the line St. Paul to Duluth, and Cloquet, Minn., inclusive, Index Nos. 1 to 36, inclusive, of G. N. Ry. G. F. O. No. 435-B, I. C. C. No. A-4413, see pages 5, 6, and 7 hereof.

For rules and charges governing the reconsignment or diversion of coal and coke at all other stations, see G. N. Ry. G. F. O. No. 440-B, I. C. C. No. A-4295, supplements thereto and reissues thereof.

No charge will be made—

(c) For a single diversion or reconsignment if order for such diversion or reconsignment is received at initial billing point before car leaves the yard at such initial billing point, provided the change involves no extra movement of the car.

33 (d) Where a car is placed for delivery at destination, and an order for the delivery of the contents thereof to other than the billed consignee is or has been presented to and accepted by the agent of this company at destination, and no change is involved in billing records, nor additional movement of car required.

(e) Where a change in route is made necessary by embargo placed against the billed destination or route thereto subsequent to acceptance of the shipment by carrier at point of origin.

Rules and charges.

Rule 1. Transfers and waybills covering shipments which have been diverted or reconsigned under these rules should bear separate notation stating where and when the diversion or reconsignment was effected and charges, if any, were made.

Rule 2. Freight rate applicable: These rules and charges will apply whether shipments are handled at local rates, joint rates, or combination of intermediate rates. The through rate to be applied under these rules is the rate from point of origin via the diversion, reconsigning, or reforwarding point to final destination in effect on date of shipment from point of origin. If the rate from original point of shipment to final destination is not applicable through the point at which the car is diverted, reconsigned, or reforwarded, in connection with this line, the tariff rates in effect to and from the diversion, reconsigning, or reforwarding point will apply, plus diversion or reconsigning charges.

34 Rule 3. Demurrage and track storage rules: Freight stopped, diverted, reconsigned, or reforwarded under these rules will in addition be subject to demurrage and track storage charges lawfully in effect at point where stopping, diversion, reconsignment, or reforwarding is accomplished.

Rule 4. (a) Application: The rules published herein, governing the diversion or reconsignment of freight, are applicable while the freight is in possession of this company, also when it has reached billed destination on this line and has been delivered to switching road for placement.

(b) Switching charges additional: If diversion or reconsignment is made after arrival of car at billed destination and the car has been delivered to a connecting road, the switching charges of connecting road will be in addition to any other charge named herein.

(c) Diversions or reconsignments beyond rails of this company: When diversion or reconsignment is requested after shipment has passed out of possession of this company, or when request is received too late for this company to effect the change desired, such request will be transmitted to direct connecting carrier to which shipment will be delivered, when the responsibility of this company will end; and the shipment will be subject to rules of the carrier on whose rails the diversion or reconsignment is accomplished (except as per section (a) of this rule).

Rule 5. (a) Only one change in destination will be permitted by this company under these rules, except as provided in section 35 (b), and then only provided the car has not had a previous change in destination after leaving the initial billing point.

(b) If the consignor, consignee or owner requests a subsequent change necessitating movement of the car, the shipment will be treated as a reshipment from point of reforwarding and will be charged at the tariff rate therefrom, plus \$5.00 per car.

(c) If a car is stopped short of billed destination after it has had one diversion or reconsignment under these rules, charges will be made on basis of the tariff rates to and from the point at which the first diversion or reconsignment was accomplished plus five dollars (\$5) per car in addition to the other diversion or reconsignment charges previously accrued.

Rule 6. Change in name of consignor: The charge for a change in the name of consignor with no further change in billing instructions, will be \$1.00 per car, except as provided in exception (c).

Rule 7. Diversion or reconsignment in transit: If a car is diverted or reconsigned in transit prior to arrival at original destination, or if the original destination is served by a terminal yard, then prior to arrival at such terminal yard, a charge of \$2.00 per car will be made for such service.

Rule 8. Stopping in transit: If a car is stopped for orders for the purpose of delivery or diversion or reconsignment or reforwarding prior to the arrival at original billed destination, or if such destination is served by a terminal yard, then prior to arrival at such

36 terminal yard, on request of consignor, consignee or owner, a charge of \$2.00 per car will be made for such service and the point where the car is stopped will be considered the destination of the freight. If the car is subsequently forwarded from point at which held, the provisions of rules 9, 10, 11, or 12, as the case may be, will also be applied. The service of stopping as provided in this rule will not prevent one change of destination under the provisions of section (c) of rule 5.

Rule 9. Changed at destination on orders given before arrival: If order for diversion or reconsignment is placed with local freight agent at billed destination or other designated officer, in time to permit instructions being given to yard employes prior to arrival at such billed destination, or if the original destination is served by a terminal yard, then prior to arrival at such terminal yard, a charge of \$2.00 per car will be made for such service.

Rule 10. Diversion or reconsignment to points outside switching limits before placement: If a car is diverted, reconsigned or reforwarded on orders placed with local freight agent or other designated officer after arrival of car at original destination, but before placement for unloading, or if the original destination is served by a terminal yard, then after arrival at such terminal yard, a charge of \$5.00 per car will be made if car is diverted, reconsigned or reforwarded to a point outside of switching limits of original destination.

37 Rule 11. Diversion or reconsignment to points within switching limits before placement: A single change in the name of consignee at destination and (or) a single change in or a single addition to the designation of his place of delivery at destination will be allowed:

(a) Without charge, if order is received in time to permit instructions to be given yard employes prior to arrival of car at desti-

nation, or if the destination is served by a terminal yard, then prior to arrival at such terminal yard.

(b) At a charge of \$2.00 per car if such orders are received in time to permit instructions to be given to yard employes within twenty-four (24) hours after arrival of car at destination, or if the destination is served by a terminal yard, then within twenty-four (24) hours after arrival at such terminal yard. (See note.)

(c) At a charge of \$5.00 per car if such orders are received subsequent to twenty-four (24) hours after arrival of the car at destination, or if the destination is served by a terminal yard, then subsequent to twenty-four (24) hours after arrival at such terminal yard. (See note.)

NOTE.—In computing time, Sundays and legal holidays (national, State, and municipal) will be excluded. (When a legal holiday falls on Sunday the following Monday will be excluded.)

Rule 12. Diversion or reconsignment to points outside switching limits after placement: If a car has been placed for unloading at original billed destination and reforwarded therefrom without being unloaded, to a point outside of the switching limits, it will be subject to the published rates to and from the point of reconsignment, plus five dollars (\$5.00) per car reconsignment charge, except that in no case shall the total charge be less than the charge based on the through rate from point of origin to final destination, plus \$5.00 per car reconsignment charge.

Rule 13. Diversion or reconsignment to points within switching limits after placement: Cars that have been placed for unloading and which are subsequently reforwarded without being unloaded to a point within the switching limits of the billed destination will not be subject to diversion or reconsignment charge, but will be subject to the switching or local rate in addition to the rate from point of origin to billed destination.

Rules and charges governing grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto.

Grain, seed (field), seed (grass), hay or straw, carloads, may be held in cars on track for the privilege of National, State, board of trade, or other official inspection and disposition orders incident thereto at billed destination or at a point intermediate thereto, subject to the following rules and charges. These charges shall be made in addition to demurrage, track storage, and other lawful charges, and shall accrue to the road performing the service and be noted on the waybill.

The term grain as used herein includes corn, barley, oats, rye, wheat, buckwheat, popcorn, grain screenings, and seed screenings.

Rules.	Charge (see note 1).
Rule 1. When disposition order is received prior to expiration of twenty-four (24) hours after first 7.00 a. m. after arrival.	\$2.00 per car.
Rule 2. If disposition order is received subsequent to the period prescribed in rule 1, but within seventy-two (72) hours after first 7.00 a. m. after arrival.	\$2.00 per car for the first 24 hours plus a charge of \$1.00 per car for each additional 24 hours or fraction thereof.
Rule 3. If disposition order is not received within the seventy-two (72) hour period prescribed in rule 2.	\$5.00 per car.

NOTE 1.—If delivery is taken and car is unloaded from track where inspected, above charges named in rules 1, 2, and 3 will not apply.

Rule 4. In computing time, Sundays and legal holidays (National, State, and municipal) will be excluded. When a legal holiday falls on a Sunday, the following Monday will be excluded.

Rule 5. For the purpose of disposing of car after it has been officially inspected the disposition order received after official inspection will be considered as being in lieu of consignment instructions under which car arrived at official inspection point.

Rule 6. If grain, hay, straw, field seed, or grass seed, carloads, is held on track except for official inspection, the general diversion and reconsigning rules published herein will apply.

Rules and charges governing the diversion or reconsignment of coal and coke.

The following rules and charges will apply at St. Paul, Minneapolis, Minnesota Transfer, Duluth, Minn.; Superior, Allouez, Wis.; and all stations on the line from St. Paul to Duluth and Cloquet, Minn., shown at Index Nos. 1 to 36, inclusive, of G. N. Ry. G. F. O. No. 435-B, I. C. C. No. A-4413. Rules and charges shown in G. N. Ry. G. F. O. No. 440-B, I. C. C. No. A-4295, supplements thereto and reissues thereof, will continue to apply at all other stations.

Application.

Coal, coal boulets or briquets, or coke (except petroleum coke), in carloads, may be diverted or reconsigned on this company's lines, subject to the following rules, regulations, and charges.

If request is made for diversion or reconsignment this company will make diligent effort to locate the shipment and effect diversion

reconsignment, but will not be responsible for failure to effect the diversion or reconsignment desired unless such failure is due to the negligence of its employees.

Definition.

For the purpose of applying these rules, the term "Diversion" or "reconsignment" means:

- a) A change in the name of the consignee.
- b) A change in the name of the consignor. (See rule 6.)
- c) A change in destination. (See rule 5.)
- d) A change in route at the request of consignor, consignee, or carrier.
- e) Any other instruction given by consignor, consignee, or owner necessary to effect delivery which requires a change in billing or an additional movement of the car, or both. (See section (b) of exceptions.)

Conditions.

- a) Orders for reconsignment or diversion will not be accepted under these rules at or to a station or to a point of delivery against which an embargo is in force.
- b) Request for diversion or reconsignment must be made or confirmed in writing, and be accompanied by satisfactory evidence of ownership.
- c) Prepayment or guarantee of charges: All charges accruing under these rules must be paid or guaranteed to the satisfaction of the carrier by the person or persons requesting the diversion or reconsignment or reforwarding before shipments are forwarded.

Exceptions.

No charge will be made—

- (a) For a single diversion or reconsignment if order for such diversion or reconsignment is received at initial billing point before car leaves the yard at such initial billing point, provided the change involves no extra movement of the car.
- (b) Where a car is placed for delivery at destination, and an order for the delivery of the contents thereof to other than the billed consignee is or has been presented to and accepted by the agent of this company at destination, and no change is involved in billing records, or additional movement of car required.
- (c) Where a change in route is made necessary by embargo placed against the billed destination or route thereto subsequent to acceptance of the shipment by carrier at point of origin.

Rules and charges.

Rule 1. Transfers and waybills covering shipments which have been diverted or reconsigned under these rules should bear separate

notation stating where and when the diversion or reconsignment was effected, and charges if any were made.

Rule 2. Freight rate applicable: These rules and charges will apply whether shipments are handled at local rates, joint rates, or combination of intermediate rates. The through rate to be applied under these rules is the rate from point of origin via the diversion, reconsigning, or reforwarding point to final destination in effect on date of shipment from point of origin. If the rate from original point of shipment to final destination is not applicable through the point at which the car is diverted, reconsigned, or reforwarded, in connection with this line, the tariff rates in effect to and from the diversion, reconsigning, or reforwarding point will apply, plus diversion or reconsigning charges.

Rule 3. Demurrage and track storage rules: Shipments stopped, diverted, reconsigned, or reforwarded under these rules will in addition be subject to demurrage and track storage charges lawfully in effect at point where stopping, diversion, reconsignment, or reforwarding is accomplished.

Rule 4. (a) Application: The rules published herein are applicable while the shipment is in possession of this company, also when it has reached billed destination on this line and has been delivered to switching road for placement.

(b) Switching charges additional: If diversion or reconsignment is made after arrival of car at billed destination and the car has been delivered to a connecting road, all switching charges of connecting road will be in addition to any other charge named herein.

(c) Diversions or reconsignments beyond rails of this company: When shipment has been delivered to connecting line before diversion or reconsignment can be accomplished, request to divert or reconsign should be made direct to such connecting line, except as provided in section (a) of this rule.

Rule 5. (a) Only one change in destination will be permitted under these rules by this company, except as provided in section (b), and then only provided the car has not had a previous change in destination after leaving the initial billing point.

(b) If the consignor, consignee, or owner requests a subsequent change necessitating movement of the car, the shipment will be treated as a reshipment from point of reforwarding, and will be charged at the tariff rate therefrom, plus \$5.00 per car.

(c) If a car is stopped short of billed destination after it has had one diversion or reconsignment under these rules, charges will be made on basis of the tariff rates to and from the points at which the first diversion or reconsignment was accomplished plus five dollars (\$5) per car in addition to the other diversion or reconsigning charges previously accrued.

Rule 6. Change in name of consignor: The charge for a change in the name of consignor with no further change in billing instru-

tions will be \$1.00 per car, except as provided in section (a) of exceptions.

Rule 7. Diversion or reconsignment in transit: If a car is diverted or reconsigned in transit prior to arrival at original destination, or if the original destination is served by a terminal yard, then prior to arrival at such terminal yard a charge of \$2.00 per car will be made for the service.

Rule 8. Stopping in transit: If a car is stopped for orders for the purpose of delivery or reconsignment or diversion or reforwarding prior to the arrival at original billed destination, or if such destination is served by a terminal yard, then prior to arrival at such terminal yard, on request of consignor, consignee, or owner, a charge of \$2.00 per car will be made for such service, and the point where the car is stopped will be considered the destination of the freight. If the car is subsequently forwarded from point at which held, the provisions of rules 9, 10, 11, or 12, as the case may be, will also be applied. The service of stopping as provided in this rule will not prevent one change of destination under the provisions of section (c) of rule 5.

Rule 9. Changed at destination on orders given before arrival: If order for diversion or reconsignment is placed with local freight agent at billed destination, or other designated officer, in time to permit instructions being given the yard employes prior to arrival at such billed destination, or if the original destination is served by a terminal yard, then prior to arrival at such terminal yard, a charge of \$2.00 per car will be made for such service.

Rule 10. Diversion or reconsignment to points outside switching limits before placement: If a car is diverted, reconsigned or reforwarded on orders placed with local freight agent, or other designated officer after arrival of car at original destination, but before placement for unloading, or if the original destination is served by a terminal yard, then after arrival at such terminal yard, a charge of \$5.00 per car will be made if car is diverted, reconsigned or reforwarded to a point outside of switching limits of original destination.

Rule 11. Diversion or reconsignment to points within switching limits before placement: A single change in the name of consignee at destination and (or) a single change in or a single addition to the designation of his place of delivery at destination will be allowed:

(a) Without charge if order is received in time to permit instructions to be given yard employes prior to arrival of car at destination, or if the destination is served by a terminal yard, then prior to arrival at such terminal yard.

(b) At a charge of \$2.00 per car if such orders are received in time to permit instructions to be given to yard employes within twenty-four (24) hours after arrival of car at destination, or if the destination is served by a terminal yard, then within twenty-four (24) hours after arrival at such terminal yard.

Except that on shipments of coal originally consigned to and credited Terminal Coal Pool Associations and ordered delivered to final consignee within twenty-four (24) hours after arrival of car at terminal yard, there will be no charge. (To be published only by roads reaching such pool points.)

(c) A charge of \$5.00 per car if such orders are received subsequent to twenty-four (24) hours after arrival of the car at destination, or if the destination is served by a terminal yard, then subsequent to twenty-four (24) hours after arrival at such terminal yard.

NOTE.—In computing time, Sundays and legal holidays
47 (National, State and municipal), will be excluded. When a holiday falls on Sunday, the following Monday will be excluded.

Rule 12. Diversion or reconsignment to points outside switching limits after placement: If a car has been placed for unloading at original destination and forwarded therefrom without being unloaded to a point outside of the switching limits, it will be subject to the published rates to and from the point of reshipment, plus five dollars (\$5.00) per car reconsignment charge, except that in no case shall the total charge be less than the charge based on the through rate from point of origin to final destination, plus \$5.00 per car reconsignment charge.

Rule 13. Diversion or reconsignment to points within switching limits after placement: Cars that have been placed for unloading and which are subsequently reforwarded without being unloaded to a point within the switching limits of the billed destination will not be subject to diversion or reconsignment charge, but will be subject to the switching or local rate in addition to the rate from point of origin to billed destination.

NOTE.—Where no switching tariff is in effect, the charge will be ten (10) cents per ton of 2,000 pounds, minimum five (\$5) per car.

Great Northern Railway Company Supplement No. 1 to G. N. Ry. G. F. O. No. 1240-A was marked "Plaintiff's Exhibit D"
48 Mr. SIMPSON, Plaintiff offers in evidence Plaintiff's Exhibit D, being "Supplement No. 1 to G. N. Ry. G. F. O. No. 1240-A," under the same agreement.

The Court. Received.

Following is a copy of plaintiff's Exhibit D:

Supplement No. 1 to G. N. Ry. W. P. S. C. No. 658.

Supplement No. 1 to G. N. Ry. N. D. R. C. No. 41.

Supplement to No. 1 to G. N. Ry. I. C. C. No. A-4524.

Great Northern Railway Company, Watertown & Sioux Falls Ry. (FX 2, No. 13), Supplement No. 1 to G. F. D. No. 3416.

Supplement No. 1 to G. N. Ry. G. F. O. No. 1240-A.

Refer to the above-numbered tariff naming rules and charges governing diversion or reconsignment of carload freight at stations on the above-named lines, except on intrastate traffic in Minnesota.

South Dakota, Wisconsin, Iowa, Montana, and Idaho, and amend as shown herein.

Issued May 1, 1918.

Issued under authority of rule 9-K, Tariff Circular 18-A, and in compliance with Investigation and Suspension Docket No. 1161 of the Interstate Commerce Commission Reconsignment Case (No. 2) of April 29, 1918.

H. H. Brown,

Assistant Traffic Mgr.,
St. Paul, Minn.
Great Northern Ry Co

M. J. Costello,

Assistant Traffic Mgr.,
Great Northern Ry. Co.
Seattle, Wash.

Issued by P. H. Burnham, General Freight Agent, Great Northern Ry. Co., St. Paul, Minn.

Edgar E. Clark, Winthrop M. Daniels, Robert M. Woolley,
Commissioners.

At a session of Division 2 of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of April, A. D. 1918.

Investigation and Suspension Docket No. 1161.

Reconsignment case (No. 3).

It appearing that there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint charges, and new individual and joint regulations and practices affecting such charges, to become effective on the 1st day of May, 1918, designated as follows:

Great Northern Railway Company: G. N. Ry. I. C. C. No. A-4524.

It is ordered, that the Commission upon complaint, without formal pleading, enter upon a hearing concerning the propriety and lawfulness of the charges, regulations and practices stated in the said schedules contained in said tariffs, viz, the rules and charges governing grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto.

It further appearing, that said schedules make certain increases in charges for the interstate transportation of grain, hay, and straw—carloads—and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon.

It is further ordered, that the operation of the rules and charges governing grain, seed (field), seed (grass), hay or straw—carloads—

held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto, appearing in said schedules contained in said tariffs, be suspended, and that the use of the said rules and charges, therein stated be deferred upon interstate traffic until the 29th day of August, 1918, unless otherwise ordered by the Commission, and no change shall be made in such rules, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, that the charges thereby sought to be changed shall not be increased and the rules, regulations, and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

51 And it is further ordered, that a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules, and upon C. E. Bode, A. C. Fonda, F. W. Gomph, and C. H. Griffin, agents, and that said carriers parties to said schedules be, and they are hereby, made respondents in this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, Division 2:

[SEAL.]

GEORGE B. MCGINTY,

Secretary.

In compliance with the above order, rules, and charges, provided on lower portion of page 4 of G. N. Ry. I. C. C. No. A-4524, G. F. O. No. 1240-A, are under suspension and will not be applied until August 29, 1918, unless otherwise ordered by the Interstate Commerce Commission.

During period of suspension, no charge will be made on grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto."

Substitute the following for paragraph (a) under caption "Exception" shown on page 2 of tariff:

(a) Grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto.

52 Q. You say you have been with the Merchants Elevator Company for two years, Mr. Barwin?

A. Yes, sir.

Q. What did you do prior to that?

A. I was in the traffic department of a railroad.

Q. What railroad?

A. The South Dakota Central.

Q. For how long?

A. I was with them for about seven years.

Q. Was that when you started to work, or had you had previous experience?

A. Previous to that I was with the Milwaukee.

Q. How long were you with the Milwaukee?

A. About three years.

Q. Will you state what your experience has been as to the handling, reading, and so forth, of tariffs and other rate matters?

A. I have had quite a good deal. I acted as general freight agent for the South Dakota Central for about two years. Previous to that—

Q. And part of your duties there were handling and reading and filing, and so forth, of tariffs?

A. Yes, sir.

Q. And since you have been with the Merchants Elevator, that has also been a part of your duties?

A. Yes, sir.

Q. In other words, you claim to be a traffic or rate man?

A. Yes, sir.

Q. From your former experience?

A. Yes, sir.

Q. Showing you plaintiff's Exhibits C and D, I will ask you if you are familiar with those tariffs?

A. Yes, sir.

Q. Will you state whether or not those are the tariffs in effect, or not in effect, as the case may be, anyway the tariffs covering the charge which is here in dispute with the Great Northern Railroad?

Mr. FINERTY. We will admit they are.

Mr. SIMPSON. And that there were no others?

Mr. FINERTY. We will admit that; that is, so far as these charges are concerned. These do not contain the transportation rate.

Mr. SIMPSON. Yes; I understand that there is no dispute about that. These are the Great Northern tariffs and the only tariffs covering this particular dispute in question.

Q. Will you state, Mr. Barwin, from your experience as a rate and traffic man, what, in your opinion, the charge would be, or if there would be any under the facts as already shown in this case?

Mr. FINERTY. Just a moment, before you answer, Mr. Barwin, Mr. Simpson, just to avoid a complicated record here, in connection with what you just stated, may it be admitted of record that the transportation rate is not involved here, and that the transportation rate collected was the through rate in effect from point of origin to Anoka.

Mr. SIMPSON. Is that right?

WITNESS. The transportation rate—you mean the freight charges?

Mr. FINERTY. The freight charges, yes; exclusive of this reconsignment charge.

WITNESS. Yes.

The COURT. This question, as I understand it, relates solely to whether the plaintiff claims was an overcharge at Willmar on account of taking the reconsignment charge.

Mr. FINERTY. On account of making the reconsignment charge; that is right.

Mr. SIMPSON. Now, will you answer the question, Mr. Barwin?

Mr. FINERTY. I want to object to the question on the grounds previously specified, which I understand are preserved by my motion to dismiss the case, and on the ground it calls for a conclusion on the part of the witness, and the tariff itself is the best evidence of its application.

Mr. SIMPSON. Expert testimony, your honor.

The COURT. That is the precise thing the court is called upon to determine, isn't it?

Mr. BENSON. Yes.

The COURT. And the court must do it from an inspection of the tariff, must it not?

Mr. SIMPSON. I think it is exactly within the same class of testimony that a jury may consider a personal injury case; the jury may be advised by a doctor as to what the injuries are, and in a case like this it is purely a matter of expert opinion or the opinion of an expert rate man, and it seems to me that it is perfectly proper to

55 have such an expert state to the court simply what his opinion is or what his construction of the tariff is. But, of course, it is for the court to determine whether or not that is correct; it is nothing that is binding on the court at all. Certainly, in a case like this I do not see where the court is going to get any light on the question if the court has to go through the tariff himself without any light from either side as to what their contentions are.

Mr. FINERTY. A question might properly be framed to present the matter so that it would inform the court, but the question now, as I understand it, calls for the conclusion of this witness as to whether or not there is any charge in that tariff applicable to these shipments. The witness might be asked to specify what portion of the tariff he considers relevant to this issue and to point them out to the court, as advising the court, but certainly the negative conclusion of the witness that there is nothing in the tariff is a mere conclusion that is not informing to the court at all. Let the witness state on what grounds he believes that there is no charge applicable.

Mr. SIMPSON. I will have to follow that. Of course, I have got to get some starting place, and then I intend to follow that by asking what part he considers applicable and what other part he does not consider applicable, and why.

The COURT. Waiving the question of the competency of the evidence, the plaintiff has merely in his opening to show a negative state of affairs. I suppose if the defendants were introducing

56 testimony along the same line, it might be entirely proper for the defendants to show why the charge should be made.

Mr. FINERTY. My objection only is, your honor, to any statements by this witness in the nature of a conclusion that no charge is applicable.

Mr. SIMPSON. I am merely asking him to state, as an expert, what his opinion is.

The COURT. I will take it subject to the objection. I am not saying what weight it will have with the court.

A. There is no charge—in my opinion there is no charge.

Q. Now, if you will state first on what you base that opinion, that is, what part of the tariff applies in your opinion, or what parts of the tariff are relevant to the matter here involved.

Mr. BENSON. The same objection is made, your honor, that all of these questions call for the conclusion of the witness.

The COURT. Same ruling. It is taken subject to the objection, subject to be stricken out.

A. Why, this tariff covers the rules and charges governing diversion or reconsignment only.

Q. Where do you find that?

A. We find that on the title-page, and also under the application on page 2.

Mr. BENSON. The witness had better mark the portion.

Mr. SIMPSON. That tariff is marked, I think. I think there are blue lines underlining the portion.

Mr. FINERTY. Just as incident to what the witness is stating and the desirability of having it marked, his answer is that the tariff covers diversion or reconsignment only. I would like him to point out on the tariff the word "only." On what do you base the answer that it does that "only"?

Mr. BENSON. Wouldn't it be just as well, for the purpose of the record, to let the witness read into the record the portions of the tariff that he refers to?

Mr. SIMPSON. That is all right. Just read in the portions of the tariff upon which you base your answer.

WITNESS. All right.

Mr. BENSON. From the title page.

WITNESS. All right. "Local and joint tariff naming rules and charges governing diversion or reconsignment of carload freight at stations on the above named lines except on intrastate traffic"—

Q. Just read the material portions.

A. All right. "Minnesota," etc.

Mr. BENSON. That is on the title page?

WITNESS. That is on the title page. On page 2, under the heading "Rules and charges governing the diversion or reconsignment of carload freight;" under the subcaption or subheading "Application": "Freight in carloads, except as provided below, may be diverted or reconsigned on this company's lines, subject to the following rules, regulations, and charges." Under "Exceptions" we find that "These

rules will not apply to: Grain, hay, straw, or grass and field seeds held or stopped for official inspection. (See page 4.)

In "Supplement No. 1 to G. N. Ry., G. F. O. No. 1240-A," effect the same day, in the lower portion of the second page—

Q. What are you reading now—the cancellation?

A. Yes; the cancellation.

Q. Hadn't you better take it up in general what page 4 contains first?

A. Well, yes; all right.

Q. Just state in a general way. You need not read all of that. What part of page 4?

A. The lower portion of page 4 we find: "Rules and charges governing grain, seed (field), seed (grass), hay, or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto." This goes on and names certain rules that were suspended on the same date that the tariff was made in effect.

The COURT. I suggest to counsel at this point in the case, lest I forget it, that the court would be glad to have you point out later on the difference between the terms "official inspection" as used on page 2 under "Exceptions" and the term "inspection" as used in rule 13 on page 4. One is "official inspection" and the other is merely "inspection."

Mr. FINERTY. There is no difference so far as this case is concerned.

Mr. SIMPSON. Not as far as I know.

59 The COURT. What occurred to me was that under rule 13 just pointed out, it might merely be held for unofficial inspection by the purchaser.

Mr. FINERTY. Rule 13, your Honor, is really not involved in this case. While the heading the witness just read would appear to be under rule 13, it is not really under rule 13. It is a new heading of its own, and properly should have some other number.

The COURT. All right. Go ahead.

Mr. FINERTY. That is correct, Mr. Witness, isn't it?

WITNESS. Yes. The lower portion of page 4 was suspended on the same date that the tariff was issued.

The COURT. Which part?

WITNESS. The lower portion, that starts in with "rules and charges governing grain," et cetera. The charges therein were suspended by the commission, and during the period of suspension, as per supplement No. 1 of the above named tariff, on page 2, it is provided that "no charge will be made on grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto."

The COURT. I think, gentlemen, we will suspend at this point until Monday morning.

An adjournment was here taken until the morning of Monday, October 27, 1919.

Monday, October 27, 1919, 10 a. m.

Court convened pursuant to adjournment.

60 J. E. BARWIN was recalled and his direct examination resumed as follows:

By Mr. SIMPSON:

Q. Mr. Barwin, will you go on and state as to the application of the lower part of page 4, starting, "rules and charges governing grain, seed" and so forth?

A. The lower part of page 4 has been suspended by the Commission.

Q. That is the part referred to, in your opinion, in the exception?

A. Yes.

Q. Where it says "(See page 4)" From that heading in the middle of page 4 to the bottom of that page 4?

A. It has been suspended. During the period of suspension the supplement provides that no charge will be made.

Mr. FINERTY. Read supplement 1.

WITNESS (reading). "During period of suspension, no charge will be made on grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto."

Q. Have you examined rule 10 of the original tariff, on the bottom of page 3?

A. Yes, I have.

Q. In your opinion, does that rule apply to the shipments in this case?

A. No.

61 Mr. BENSON. These opinions are all taken subject to our objection.

The COURT. Yes.

WITNESS. Rule 10 applies to shipments where they have not been billed to a point for inspection.

Q. Or other commodities, grain, coal, or fresh fruit?

A. Yes.

Q. To make that clear, if a car was billed—

The COURT. I do not think you need spend any time on that point, Mr. Simpson; it is quite apparent.

Q. Then, it is your opinion, from your reading and construction of this tariff, that there is no charge for reconsigning upon shipment—there should be no charge?

A. When they are stopped for inspection?

Q. Yes; in the particular shipments in this case.

A. Yes, sir.

Cross-examination by Mr. FINERTY:

Q. These cars, I believe you testified, were originally consigned from Nebraska and Iowa points to Willmar, Minnesota?

A. Yes, sir.

Q. The point at which they were inspected?

A. Yes, sir.

Q. The original destination, therefore, was Willmar, Minnesota, was it not?

A. Yes, sir.

62 Q. After being inspected at Willmar, Minnesota, the cars were ordered reconsigned to Anoka, Minnesota; is that correct?

A. Yes, sir.

Q. Now, I understood you to say, that, in your opinion, rule 10 of Exhibit C does not apply?

Mr. SIMPSON. Does not apply on cars stopped for inspection.

A. On the cars in this suit, yes; it does not apply on these cars.

Q. Now, assuming that the rules on the bottom of page 4 of the same exhibit to which you refer and the suspension order in Exhibit D were out of this case, rule 10 would be applicable would it not? I am just making that assumption for the time being.

A. I don't quite get you.

Q. Assuming there were no such rules as appear on the bottom of page 4 of Exhibit C and no such statement as you read from Exhibit D, to the effect that during the period of suspension no charge will be made on grain, seed, and so forth, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto, and that rule 10 were the only rule in this tariff, rule 10 would in terms apply to the reconsignment of this car from Willmar to Anoka, would it not?

A. No. I will tell you why. Your application here provides that freight in carloads may be reconsigned except as provided before, and under exceptions you make an exception of grain, hay, and so forth and so on, do you not?

63 Q. That exception applies to the rules on page 4, does it not?

A. Yes.

Q. Now, I say, leaving the rules on page 4 out of it entirely, rule 10 would apply and the charge under rule 10 would be made?

A. If you did not make an exception, of course.

Mr. SIMPSON. Now, just get that clear. He says if you did not make an exception. But the exception is there. You made no statement about the exception.

WITNESS. You make no statement about the exception.

Q. Supposing there was no exception such as appears there and no rules on page 4 or no suspension order, then rule 10 would apply, would it not?

A. We will assume it would; yes.

Mr. SIMPSON. If there was no exception.

WITNESS. If there was no exception.

Q. Now, the exception to which you refer is the exception (a) on page 2 of Exhibit C, is it not?

A. Page 2 of the tariff 1240-A. I don't know what the exhibit number is.

Mr. SIMPSON. Yes; that is Exhibit C.

Q. And the exception is (a), is it not?

A. Yes.

Q. And "(a)" refers to page 4, does it not?

A. Yes, sir.

Q. If the rules and charges on page 4 had not been suspended, the situation would be this: That if a car had been billed originally to Willmar and was held either at Willmar or at some point between the point of origin and Willmar, the charges specified there would apply if disposition were given?

Mr. SIMPSON. For official inspection or not?

Mr. FINERTY. For official inspection. Those charges would apply, would they not?

WITNESS. Yes, sir.

Q. And those charges, with the exception of the one specified in rule 3, are less than the charges that would apply under rule 10? That is, a five-dollar charge would apply on rule 10?

The COURT. It might be less or it might be equal.

Mr. FINERTY. Yes; I say with the exception of rule 3, on page 4, the charges would be less.

Q. Now, the situation came about that the commission suspended those rules making these charges where cars were held on track for official inspection. That is right, isn't it?

A. Yes.

Q. Therefore all the charges on page 4 were eliminated from the tariff by the suspension? That is correct?

A. That is correct.

Q. Now, that suspension order as you read it says that "During period of suspension, no charge will be made on grain," et cetera, "held in cars on track for inspection and disposition orders."

Now, it does not stop there, does it? It goes on and says, "incident thereto at billed destination or at point intermediate thereto"?

That is, it confines the limitation upon disposition orders upon which no charge will be made to "disposition orders incident" to inspection at billed destination or at a point intermediate to billed destination, does it not?

A. I don't quite understand what you are trying to bring out.

Q. I am trying to bring out this: These cars were billed to Willmar. If the cars had originally been billed to Anoka and held for inspection at Willmar and been ordered to Anoka, there would have been no charge under the suspension order. That is, if the car had been billed to Willmar and disposition was given to some place on track at Willmar, after the cars had been officially inspected, you would have had no charge. Likewise, you would have had no charge if the cars had originally been billed to Anoka as the original destination and held at Willmar, which would have been a point intermediate thereto and disposition after inspection given to Anoka—

you would not have had any charge under either circumstances, would you?

A. Well, that is the way you interpret it.

Q. Well, I am asking you how you interpret it.

A. Well, I have given my interpretation.

Q. I know, but why do you ignore the limitation on the provision "There shall be no charge" where held for official inspection or disposition incident thereto at billed destinations? Now, the billed destination of these cars was Willmar, and if they had been held

at Willmar and disposition given to a point at Willmar, you
66 admit there would have been no charge under this tariff, don't you?

A. Yes; there would be no charge.

Q. Also, if they had originally been billed to Anoka and held for inspection at Willmar and disposition then given to Anoka, you admit there would be no charge?

A. If they were held at Willmar you would have charged me five dollars for stopping the car.

Q. No; we would not.

A. On your 440.

Q. No; we would not.

A. That was expressly eliminated and you are ignoring the fact that these cars were billed to Willmar—

Q. Willmar was the destination, and the disposition given at Willmar was not disposition given incident to final inspection at Willmar—

The COURT. The court understands the testimony was otherwise—that they were consigned to Willmar for the purpose of inspection. Perhaps I got that from counsel's statement.

Mr. SIMPSON. No; that is right.

The COURT. My understanding of the matter was they were billed to Willmar for official inspection, and there the routing, according to the grade, might be either one of several places.

Mr. FINERTY. The point of the matter is, your honor, that you—

Mr. SIMPSON. No; I don't think you had better make an argument on it.

Mr. FINERTY. I don't see why not. I have a right to direct
67 the testimony to a specific point. The point is this: You have shipments billed to Willmar, Minnesota, and they are ordered officially inspected there. Your original destination is Willmar, Minnesota. You have a tariff in effect that says if a shipment is held at its destination or a point incident thereto for official inspection and disposition given incident to that official inspection, there should be no charge. Now, if these cars had been, as they were, originally billed to Willmar and inspected there and disposition given on track, some other track at Willmar, there would have been no charge literally under the tariff. But you must remember that the original destination of these cars was Willmar. They could have been held at any point intermediate to Willmar under the same con-

ditions, or if they had originally been billed to Anoka they could have been held at Willmar for special inspection, and destination given to Anoka without charge. But they did not bill them to Anoka. They wanted the privilege of rebilling those cars when they got to Willmar, either to Anoka, or Minneapolis, or Duluth, as they stated.

The COURT. Your claim is that so far as anything that appears in the original shipment, so far as the carrier was concerned, Willmar was the final shipping point?

Mr. FINERTY. Exactly. And not alone was Willmar the original shipping point, but for their own purposes they made Willmar the original shipping point, the original destination, and even then they could have disposed of those cars, given disposition

of them at Willmar without any charge; but you must remember that the exception which they are claiming is a specific exception on a general rule making a charge of five dollars, and the ordinary rule is that an exception is always construed strictly.

Mr. SIMPSON. It is construed strictly against you.

The COURT. I did not mean to go into the law at this time. I was simply trying to get at what the facts were. My understanding of the facts was that the shipment had been made to Willmar for the purpose of inspection. Whether that appeared in notice to the carrier or not the facts do not show.

Mr. FINERTY. No; it did not appear; and it would be immaterial if it did. The fact is they were billed to Willmar and afterwards rebilled to a point beyond, and the charge made is for rebilling to a point beyond; and they claim we have not any right to make that charge under an exception which says that disposition might have been given at Willmar or might have been given at some point intermediate thereto, but may not be given beyond. That is the point.

Mr. SIMPSON. That is your argument.

Mr. BENSON. Let us get the record clear on that point. It is true, is it not, that there was nothing on the original billing to show that the cars were going to Willmar for inspection? There was nothing written on them to that effect?

WITNESS. Will you let me say a word? If you had written on the bill of lading "Stop the car"—

Mr. BENSON. Now, wait a minute.

Mr. SIMPSON. You answer the question just the way you want to. He has asked the witness a question and he won't let him answer it.

Mr. BENSON. Answer the question yes or no.

Mr. SIMPSON. If you can't answer it yes or no, don't answer it.

The COURT. He may answer if he knows.

WITNESS. I don't know. I haven't any idea what was on the original bills of lading that were surrendered.

Mr. BENSON. Then we move, your honor, that the statement of the witness that these cars were billed to Willmar for inspection be stricken out, on the ground that it appears that the witness has no

knowledge of the contents of the bill of lading in that regard, and that any secret intention on the part of the shipper of these cars as to what to do with the cars after their arrival at Willmar is absolutely immaterial and not binding on this defendant.

The COURT. I think the motion should be denied as a statement of what was contained in the bill of lading. It does not necessarily call for that.

Mr. SIMPSON. The witness has already testified—

Mr. BENSON. Just a moment. Do you mean that the statement by the witness as to what this contract is, when it appears that the contract is contained in a written instrument, and he now
70 says he does not know what that instrument contained—

The COURT. No; I do not think that calls for any part of the contract. It simply calls for a statement as to the destination selected by the shipper, which was Willmar.

Mr. BENSON. That is the intention which the shipper had?

The COURT. Yes.

Mr. BENSON. So far as it was communicated to the carrier.

The COURT. It does not appear that it was communicated to the carrier yet.

Mr. SIMPSON. A car of grain can not go through Willmar without being stopped for inspection; it is against the law.

The COURT. Well, go ahead. The last was with reference to the application of rule 10 to a shipment of this character.

Examined by Mr. FINERTY:

Q. Your construction, then, Mr. Barwin, is based entirely upon your contention that rule 10 does not apply to these cars, and that the suspension order, your Exhibit D, eliminates this charge on a car, even where that car was originally billed to Willmar and afterward rebilled to Anoka?

A. Yes, sir.

Mr. FINERTY. That is all.

By Mr. SIMPSON:

Q. The Great Northern pulled these cars from Willmar into Anoka?

71 Yes, sir.

Q. That is, it was not a new carrier at all?

A. No.

Mr. FINERTY. That is admitted.

Mr. BENSON. Does it already appear that they started their transportation on the C., B. & Q?

Mr. SIMPSON. Yes; it appears on the exhibit, and it has already been testified to.

Q. Now, Mr. Barwin, you testified, did you not, to clear up this point, that you issued from your office shipping instructions on cars that were bought?

A. Yes, sir.

Q. And they were shipped and moved in accordance with your orders?

A. Yes, sir.

Q. And that you ordered these cars to Willmar for the purpose of official inspection?

A. Yes, sir.

Mr. BENSON. Just a moment. We object to oral testimony as to those orders, and we object further to any testimony with regard to those orders, on the ground that they cannot be in any way binding upon the carrier in this case, the intention that was communicated by this traffic manager to people he was buying corn from down in Iowa and Nebraska.

The COURT. I hardly think it is a statement of that. I think he may tell the reason for the shipment going to Willmar.

Q. And you also explained, did you not, Mr. Barwin, the reason for that—that is, that you had corn of different grades sold at several different places?

A. Yes, sir.

Q. And you had to get Minnesota inspection on them before you could tell to what locality they were going?

A. Yes, sir.

Q. You started to make some explanation in regard to a question that Mr. Finerty or Mr. Benson asked you, as to what was on the bill of lading.

A. I was going to say, the reason we billed the cars to Willmar, in addition, we have oftentimes billed cars direct through to the ultimate destination of the car, with the notation upon the bill of lading to stop the same at Willmar for inspection and advise us the inspection before they moved the cars on, and we have never been able to get any advice after the car has been stopped until they reached Minneapolis. So the grades are not known to us until the cars actually reached Minneapolis.

Mr. BENSON. Just a moment. The State gives you the inspection, doesn't it?

WITNESS. Very true.

Mr. BENSON. The next morning after the inspection is made?

WITNESS. Yes; but the way you interpret the tariff itself—

Mr. BENSON. When were these transactions that you speak of?

WITNESS. Why, I can bring you lots of them.

Mr. BENSON. You don't know now?

73 WITNESS. I can't give a specific case now; no.

By Mr. SIMPSON:

Q. Go on and finish your explanation.

A. On cars with instructions upon the bill of lading to stop at Willmar for inspection and hold until further orders, why, the cars will come right through, and for that reason we just have to make a back haul of the stuff after it reaches Minneapolis.

Q. That is, with that instruction on the bill of lading they pay no attention to it?

A. They pay no attention to it.

Mr. FINERTY. I object to that. They do not pretend there was any such order on this bill of lading.

Mr. SIMPSON. Mr. Benson was asking him whether there was or not.

The COURT. I do not think it is very important.

Mr. SIMPSON. I do not think it is very important, either; I do not think it has got anything to do with this matter.

Mr. BENSON. I want the record to show that I was asking whether there was any request on the bill of lading to hold. There was a question as to whether the bill of lading contained any notice to the carrier.

Mr. SIMPSON. They were sending them to Willmar for inspection.

The COURT. I think that will clearly appear from the question.

74 JAMES DEVEAU, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Examined by Mr. SIMPSON:

Q. Your name is James DeVeau?

A. Yes, sir.

Q. What is your occupation, Mr. DeVeau?

A. I am in the claim business, railroad claim business.

Q. And what did you do prior to that?

A. I was traffic manager for two or three concerns here in Minneapolis.

Q. And how long have you been engaged in the grain-shipping business and traffic business?

A. Thirty-five years.

Q. All here in the city of Minneapolis?

A. Most of the time.

Q. And during that time has it been part of your duties to read, handle, and interpret tariffs?

A. Yes, sir.

Q. And you now for some time past have been engaged in auditing freight bills for different firms?

A. Yes.

Q. And reading tariffs and making corrections on rates?

A. Yes, sir.

Q. And overcharges and that kind of thing?

A. Yes, sir.

Q. I will ask you if you have made an examination of plaintiff's Exhibits C and D?

A. Let me see them.

75 Q. 1240-A Great Northern tariff and supplement 1 thereto?

A. Yes, sir.

Q. You have heard the evidence and know the facts in this case, the cars involved in this case?

A. Yes, sir.

Q. Will you state what your opinion is as to whether or not there is a charge—proper charge—for reconsigning the cars, as was done in this case, under the tariff before you?

The COURT. I think before permitting the witness to answer the question I will indicate this: That I do not think I will permit the witness to go into detail, as the prior witness did. I think perhaps the witness is enough, as a rule. Do you intend to submit evidence of a similar character?

Mr. FINERTY. Yes.

The COURT. I think the question that has been asked will be the only one permitted, outside of one witness. Otherwise I would rule out the testimony entirely, because I think it can be presented just as well to the court by counsel discussing the matter with their witnesses and then giving, in the form of argument to the court, the views the witnesses have. We have got the view of one witness in general, and I think this witness may answer this question, but we will not go into a detailed examination of the matter.

Mr. SIMPSON. I know that expert testimony is entirely within the discretion of the court. In view of the fact that this is a rather technical matter, I had prepared to present, in as short form as possible, simply the opinions of some six or seven traffic men that are competent to pass upon this.

The COURT. I think you may go as far as you have with this one and give his ultimate conclusion, unless you have something to develop with some witness that was not gone over by Mr. Barwin, the first witness.

Mr. SIMPSON. You may answer the question, Mr. DeVeau. I understand that is the court's ruling, that he may answer this one question, as to his opinion.

The COURT. Yes; he may answer it.

Q. I asked you whether or not, in your opinion, there is, under the facts in this case, under this tariff, a reconsignment charge.

A. There is no reconsignment charge according to 1240-A on grain held for inspection.

Q. That is, on the cars as the facts show in this case?

A. Yes, sir.

Cross-examination by Mr. FINERTY:

Q. You did not say what you meant, did you? You mean that, in your opinion, under supplement No. 1 to 1240-A there is not any reconsignment charge?

A. Well, but the exception is here in the original tariff. It says that "These rules will not apply to," exceptions: "Grain."

Q. Now, just a minute. The exception says: "(See page 4.)"?

A. All right.

Q. And page 4, as testified to by the original witness, would apply here if it were not for this suspension order?

A. Not necessarily.

Q. Why not, then?

A. Because it says, "Rules and charges governing grain, seed (field), seed (grass), hay, or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto"; and then it goes on and says, "Grain." Over here it says "Grain" is one of the exceptions.

Q. Where does it say "Grain" is one of the exceptions?

A. Right in there [indicating]. "These rules will not apply to grain."

Q. It says the foregoing rules, and these are the exceptions which you are reading.

Mr. SIMPSON. Mr. Finerty is talking about the rules on page 4.

WITNESS. Yes.

Q. Those are the very exceptions under which you claim there is no charge, or under which Mr. Simpson claims there is no charge, because the charges named in those exceptions are canceled by supplement No. 1.

A. Well—

Q. Aren't you aware of Mr. Barwin's opinion of that, and Mr. Simpson's?

A. I am aware of it. I am aware of the fact that other roads are paying it to me.

Q. Other roads are what?

78 A. Are paying this same charge to me.

Q. Confine yourself to the question. Are you aware that the very contention here is that those rules on page 4 would apply to this if not canceled by supplement No. 1, which uses expressly the same language and says that on account of the cancellation there shall be no charge?

A. Of course, the cancellation does the business entirely, but before the cancellation was in there there is an exception which says that these rules will not apply to grain. What does that mean?

The COURT. I do not think you need spend any time on that. I think the court understands that.

Mr. FINERTY. I am sure the court does, but I wanted to show the witness did not, and it is perfectly obvious. That is all.

Mr. SIMPSON. I will call Mr. Adams.

Mr. FINERTY. Have you six more experts like that?

JUDSON F. ADAMS, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Examined by Mr. SIMPSON:

Q. Your name is what?

A. Judson F. Adams.

Q. What is your occupation, Mr. Adams?

A. I am in charge of traffic for the Armour Grain Company, of Minneapolis.

Q. And what did you do prior to that, Mr. Adams?

A. I was in the railroad service for seventeen years, I believe.

Q. Speak a little louder.

A. I was in the railroad service, for the Northern Pacific, the M. & St. L., and the Milwaukee, for 17 years.

Q. And have your duties during that time been to read and interpret and handle rates and tariffs, and so forth?

A. Yes, sir.

Q. And are you familiar with plaintiff's Exhibits C and D, those two tariffs?

A. Yes, sir.

Q. And do you know the facts in this case?

A. Yes, sir.

Q. In your opinion, under the facts in this case, the cars involved in this case, is there any proper reconsigning charge for the consignment or diversion made in this case?

A. No, sir; I do not think there is a proper charge published for that, under these tariffs.

Cross-examination by Mr. FINERTY:

Q. Mr. Adams, would the reason by which you reached that conclusion be similar to Mr. Barwin's or similar to Mr. DeVeau's? Did you hear Mr. Barwin's examination?

A. Most of it.

Q. You reach that conclusion by considering rule 10 as not applicable?

A. Yes, sir.

Q. And that the cancellation notice under supplement No. 1—that is, Exhibit D—cancels the charge that would otherwise be made by the rules on page 4 of Exhibit C; is that correct?

A. I believe there is one point there that I don't quite agree with the previous witness concerning.

Q. What is that point?

A. The point that I would make is that the only thing—

Mr. SIMPSON. Talk a little louder, please.

WITNESS. The only clause in the tariff 1240-A making it applicable on grain under any consideration is paragraph 6, at the bottom of page 4.

Q. And it is that rule 6 on page 4 that makes the charge inapplicable here?

A. Yes, sir. Rule 6 is suspended along with the rest of the rules on page 4.

Q. That is your interpretation?

A. Yes, sir.

Mr. FINERTY. That is all.

Mr. SIMPSON. I had some other men coming, but I guess they are not here. I will rest. There are three or four other witnesses, but I can use them in rebuttal, if there is going to be any.

Mr. FINERTY. I want to renew at this time, your honor, my motion to dismiss the case for want of jurisdiction, it not appearing that the Interstate Commerce Commission has construed these tariffs, and there is, therefore, no basis upon which the court can proceed.

Mr. SIMPSON. I will make the further remark in regard to that motion, that the Interstate Commerce Commission has already construed it.

The COURT. The motion will be denied.

81 HERMAN J. MEHLS, being duly sworn as a witness on behalf of the defendant, testified as follows:

Examined by Mr. FINERTY:

Q. Will you state your position with the Railroad Administration, Mr. Mehls?

A. My present position is chief tariff clerk in the general freight department at the general offices at St. Paul.

Q. Of the Great Northern Railroad?

A. Of the Great Northern Railroad.

Q. And previous to the Federal control of railroads, what position did you occupy with the Great Northern Railway Company?

A. The same position.

Q. How long have you been with the Great Northern Railway Company?

A. Possibly about fifteen or seventeen years.

Q. During that time have you been continuously employed in the traffic department?

A. Yes, sir.

Q. And have your duties required you to be familiar with the tariffs of that company and to construe and apply them?

A. Yes, sir.

Q. I show you plaintiff's Exhibits C and D, and ask you if you are familiar with them?

A. Yes, sir; I believe I am.

Q. Have you heard the testimony as to the manner in which the cars in suit here were billed?

A. I heard the greater part of it.

82 Q. And are you familiar with the fact that the cars upon which this suit was brought were billed from Iowa and Nebraska points to Willmar, Minnesota?

A. I understand so.

Q. And after arrival at Willmar they were ordered inspected and subsequently reconsigned to Anoka?

A. I understand that to be the case.

Q. And on that basis will you state what charge, if any, is applicable to the cars when reconsigned to Anoka, and the item of the tariffs in question making such a charge?

A. My interpretation is that rule 10, page 3, of the tariff referred to applies.

Q. That is Exhibit C?

A. Yes, sir; it is marked "Plaintiff's Exhibit C."

Q. Are you familiar with the cancellation of the rules on the lower portion of page 4 of the same exhibit?

A. Yes, sir; with their suspension.

Q. With their suspension. And you are familiar with the provisions of Exhibit D providing that no charge shall be made on grain, and so forth, "held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto?"

A. I am familiar with that supplement.

Q. Will you explain why, in your opinion, that provision does not apply to these cars?

A. My interpretation is that supplement 1 referred to cancels or suspends the rules shown on page 4 of the original tariff, which were published for the purpose of making a certain charge for the billing of cars of grain, etc., held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto.

Q. That is, Mr. Mehls, that had the cancellation notice of Exhibit D not been published and a car had been billed to Willmar for inspection and disposition given even to a point on track at Willmar after inspection, the charges specified on page 4 of Exhibit C would have applied?

A. Yes, sir.

Q. And that would have applied if the cars had originally been billed to Anoka and held for inspection at Willmar?

A. Yes, sir.

Q. But when that item was canceled by Exhibit D, it canceled any charge on a car billed originally to Willmar and disposition given on track at that point, that is, to some other track at Willmar, or on a car billed to Anoka and held for inspection at Willmar and finally ordered to Anoka?

A. That is my understanding of it.

Q. You, however, consider—

Mr. SIMPSON. I object to the form of the question, the way you start it. I wish you would ask him why he considers it, instead of saying you consider it, because—

Mr. FINERTY. It does not make any difference.

Mr. SIMPSON. Well, ask him why he considers it so.

Q. Will you state why the fact that these cars were not originally billed to Anoka or disposition not given to another point at Willmar, makes the cancellation notice inapplicable to these cars?

The COURT. That is not quite what you meant to say, is it, Mr. Finerty, if I may suggest?

Q. You mean the charges would not apply?

A. That is correct.

Mr. FINERTY. Strike that question out. I will change the question. It is very hard to ask this question without putting it in leading form.

Mr. SIMPSON. That is just what I object to.

The COURT. I assume what counsel meant was why he considers the charge should be made under rule 10 where the final destination was Willmar, when it would not have been made if the final destination had been Anoka, with the privilege of inspection at Willmar on the way.

Mr. FINERTY. Answer the question suggested by the court.

A. I would answer that the rule 10 would apply because the car was reconsigned, and the rules shown on page 4 were not intended and do not appear to me to cover a case where a car is reconsigned in transit.

Q. After arrival at original destination?

A. After arrival at original destination.

Q. And you construe rule 10 as applying where a car is reconsigned in transit before placement after arrival at original destination?

A. Yes, sir.

Q. That is, you construe this rule as applying because these
85 cars had arrived at their original destination, Willmar, and had not been placed at Willmar for unloading?

A. Yes, sir.

Q. And were reconsigned to a point beyond Willmar, Anoka; is that correct?

A. That is correct.

Q. And you construe the rules on page 4, and as suspended by Exhibit D, as not applying because these cars were originally billed to Willmar and were not billed to Anoka, and were rebilled after arrival at their final destination, Willmar, to Anoka; is that correct?

A. That is my construction of the tariff.

Cross-examination by Mr. SIMPSON:

Q. Calling your attention to the title page of Exhibit C. It says they are "Rules and charges governing diversion or reconsignment," does it not?

A. Yes, sir.

Q. Does that say that it covers any other charge, a disposition charge, a hold charge?

A. It does not, because you can not put all those things on a title page.

Q. Aren't you supposed to put on the title page a general statement of all rules or regulations covered by that tariff, and don't you do it?

A. I consider the statement on that title page adequate to cover the tariff.

Q. Would you figure that that would cover refrigeration charges, or something like that, too?

86 Mr. BENSON. That is objected to as immaterial. If the designation is not sufficient on the title page, that is purely a matter for the Commission.

The COURT. I don't suppose the rule applies—

Mr. SIMPSON. I just want to show, when they talk about reconsignment and diversion, it is all the same thing; that is all.

Q. Now, we will suppose that supplement No. 1 had not gone into effect, Mr. Mehls; supposing this supplement No. 1 had not gone into effect at all, and cars were billed the same as they were in this case, and were held at Willmar for inspection; then under that tariff there would have been a two-dollar charge, would there not, for holding?

A. I understand there would; yes, sir.

Q. Then you reconsign the cars to Anoka and there would have been another five dollars for reconsignment?

A. That is correct.

Q. Yes, that is correct. That is seven dollars. Now, if we had billed those cars to—what is a town on your line where there is no official inspection?

A. Litchfield.

Q. If we had billed those cars to Litchfield with orders to hold, and you held them there, then we reconsigned them to Anako, there would be a five-dollar charge, wouldn't there?

A. There would be for reconsigning them.

Q. So, in other words, if we billed to the initial inspection point it costs us two dollars more than if we billed it to some other town, under your construction of that tariff?

87 A. That would be the case if the rule had not been suspended.

Q. That would have been the case?

Mr. FINERTY. It was intended to be, wasn't it?

WITNESS. Yes.

Q. And as a matter of fact, at Willmar, or any inspection point, you set out every single car of grain that comes in there, don't you?

Mr. BENSON. That is objected to as not proper cross-examination. Objection sustained.

Q. Now, you say that rule 10 applies in this case. Now, calling your attention to "Exceptions." It starts out and says, "These rules will not apply to," and then goes on and designates "grain," doesn't it? "These rules will not apply."

A. Yes, sir.

Q. That is what it says. When they say, "These rules," what does that mean? Which rules?

A. The rules in the first portion of the tariff here.

Q. What are the numbers?

A. One to 13, inclusive.

Q. Yes. And it say that "These rules will not apply," and that includes rule 10, doesn't it?

A. That is correct.

Q. To "Grain, hay, straw, or grass and field seeds held or stopped for official inspection." That is what it says, isn't it?

A. Well, it didn't say that. That rule is amended. "Grain, seed, hay, or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at
88 point intermediate thereto."

Mr. BENSON. You are reading from the last paragraph marked "(a)," on plaintiff's Exhibit D?

WITNESS. Yes.

The COURT. That is the supplement.

WITNESS. Yes, sir; that is the supplement.

Q. And it says, "disposition orders incident thereto"?

A. That is correct.

Q. That is the only difference in the rule I was reading from?

A. Yes; that is correct.

Mr. BENSON. It says, "at billed destination or at point intermediate thereto"?

WITNESS. Yes.

Mr. SIMPSON. There is no dispute but what this is the billed destination at Willmar.

Mr. FINERTY. The dispute is that there was billed disposition at Willmar. It is Anoka.

Mr. SIMPSON. You say it does say that?

Mr. FINERTY. It does.

Mr. SIMPSON. You say it does, and I say it does not.

Q. When it says "These rules will not apply to," it covers rule 10?

A. This does not refer to rule 10.

Q. "These rules will not apply," that includes rule 10, doesn't it?

A. Yes; that is correct.

Q. Now, calling your attention to rule 6, at the bottom of page 4,
which is printed in very bold type, more so than the rest of it,
89 "If grain, hay, straw, field seed or grass seed, carloads, is held on track except for official inspection, the general diversion and reconsigning rules published herein will apply." In other words, if it is for anything except "official inspection," then this rule 10 will apply?

A. That is what it says.

Q. Are you familiar with Docket 1161 of the Interstate Commerce Commission, in which they hold these charges illegal?

Mr. BENSON. Objected to as not proper cross-examination.

The COURT. I think it is proper cross-examination, Mr. Benson, if it is what the question purports to be.

Mr. BENSON. I do not think the witness, even on cross-examination, can state his conclusions of law as to the effect of a decision of either a court or a commission.

Mr. FINERTY. Just to show how misleading the question is—

Mr. SIMPSON. I asked him if he was familiar with it.

Mr. FINERTY. Wait a moment. You asked him if he was familiar with a decision of the Interstate Commerce Commission holding these charges illegal.

Mr. SIMPSON. I said Docket 1161.

Mr. FINERTY. These charges referred to are the five-dollar charge which we contend is applicable under rule 10, and the decision of the Interstate Commerce Commission to which Mr. Simpson
90 refers is the one finally canceling the charges suspended on page 4, that we say have nothing to do with this case.

The COURT. Well, of course, if the premises in the question are wrong—

Mr. FINERTY. The premise is not only wrong, but it is false.

Mr. SIMPSON. In your opinion, but the Rock Island, Omaha, and Soo all agree with me.

The COURT. Unless the circular referred to by counsel is a ruling on the precise point, I do not think it is proper cross-examination.

Q. You are familiar with that docket, 1161, called "Reconsignment case No. 3"?

A. I don't remember the document.

Q. You have never seen that decision that has come out by the Interstate Commerce Commission, the final decision on this suspension order?

A. I do not recall that I have seen it.

Q. You know there is such a decision?

Mr. FINERTY. I will admit that a decision has been made, and I am willing to have the decision filed in this court.

Mr. SIMPSON. I want to show by this man whether he knows that this decision, 1161, is the final decision in this matter.

Mr. BENSON. There is no foundation.

Mr. SIMPSON. I am trying to lay one. If he knows anything, jiminy cricket, he ought to keep up with his own rates, he is such an expert over there.

91 Mr. FINERTY. Mr. Mehls apparently does not know, but I will admit that the decision to which counsel refers is the decision suspending the—finally suspending—the rules on the lower part of page 4 of Exhibit C.

Mr. SIMPSON. The tariff involved was 1240. It is the same as the suspension of 1, isn't it? It is the final decision.

Mr. FINERTY. It is the final decision on supplement 1, but refers only to the rules on the lower portion of page 4, which have nothing to do with rule 10.

Mr. SIMPSON. The tariff is 1240 A.

The COURT. It is a continuation of the suspension already indicated in Exhibit D?

Mr. SIMPSON. Yes; it is the final decision. I just want to identify the tariff, that is all.

Examined by Mr. FINERTY:

Q. Mr. Mehls, I just want to make clear to the court that, in your opinion, the exception "(a)," reading "These rules will not apply to (a) Grain, hay, straw, or grass and field seeds held or stopped for official inspection," is modified by supplement 1: so that at the time these cars moved, the way that exception properly read, as modified by supplement 1, was: "Exceptions: These rules will not apply to grain, seed (field), seed (grass), hay, or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at points intermediate thereto"?

A. (After examining the papers.) That is my understanding, Mr. Finerty.

92 Q. That is, that which might have been a broad exception of all cars held for official inspection under the exceptions as they originally read in Exhibit C, was limited by supplement 1 which was in effect at the time these cars moved, so as to apply only to cars held on track for inspection and disposition orders incident thereto at billed destination or at points intermediate thereto?

A. That is correct.

Q. And therefore, you construe the rule 10 as applicable because this car was not held for disposition incident to official inspection at final destination or at a point intermediate to final destination?

A. That is correct.

The defendant then rested.

Mr. FINERTY. I renew my motion to dismiss the case, for want of jurisdiction.

The COURT. I have examined some of the cases cited by counsel on that proposition. I am inclined to think the court has jurisdiction, and I expect to go further into the decisions cited by counsel.

Assuming the court has jurisdiction, it seems to me that the question resolves itself into what should be the rule to apply if the final destination is an official inspection point and the carrier has no official notice of the fact that it is going there for inspection and possibly reconsignment. Should not the carrier be charged with knowledge that that is an official inspection point and that in all probability it will be reconsigned?

93 There would not be any question about this case at all, would there, that this charge would not apply, if, for instance, the railroad company had been notified that the grain was being sent to Willmar for official inspection and would be reconsigned or disposition made at that place? There would not be any question, would there, about the application, or the nonapplication, rather, of the rule, if such were the case?

Mr. FINERTY. Still, if it had been billed to Willmar, without any indication as to its final destination, I would say that the charge would apply. In other words, your honor, tariffs must be strictly complied with. That is the only way in which, of course, you can prevent favors being given one shipper that can not be given to

another. There must be literal compliance with the tariff. We contend the charge is literally applicable where the car is consigned to Willmar and disposition not given at Willmar but to a point beyond Willmar. If the car had been consigned to Anoka, inspection made at Willmar and disposition given to Anoka, then literally the charge would not have been applicable. You have to find just exactly under what conditions the tariff applies, and apply those conditions, irrespective of whether they are reasonable or unreasonable.

Mr. BENSON. To answer the specific question of the court: Is it true, Mr. Simpson, that you can consign a car, for instance, to Willmar, with the privilege of ordering it out on the same bill of lading to some other point?

94 Mr. SIMPSON. No; you can not do that. The only way you can handle it is just exactly the way we handled it.

Mr. FINERTY. The car could have been consigned to Anoka—they admit that themselves—held for inspection at Willmar and disposition of Willmar.

Mr. SIMPSON. No; we can not consign it to Anoka, because we don't know where it is going.

Mr. FINERTY. That is exactly the point, and they had to do that because of their business necessities, but they had a right to do it only under the conditions that the tariff provided. They can not make their conditions to meet their business necessities. Those conditions are fixed by the tariff.

The COURT. Now, here is a circular, Exhibit C, which purports to make certain rules and charges. The part beginning in the middle of page 4 was suspended. Isn't it fair to assume that what is covered by that portion of the circular beginning in the middle of page 4 was not intended to be covered by any of the preceding portions of the same circular?

Mr. FINERTY. That is just exactly what we say, your honor, and we say, therefore, the suspension of these charges on page 4 should not in any way affect rule 10 over here [indicating].

Mr. SIMPSON. Rule 10 does not apply at all.

The COURT. You say in the exceptions that the rules 1 to 13 do not apply to grain.

Mr. FINERTY. This is the cancellation notice down to here.

95 As this read there is force to the argument made by Mr. Simpson, that all grain held for official inspection, held or stopped for official inspection, was exempted from these rules. The carriers corrected their tariff, by providing: "Substitute the following for paragraph (a) under caption 'exception' shown on page 2 of tariff: '(a) grain, seed, hay or straw, carloads, held in cars.'" Now, it is only one certain kind of grain that is exempted from these rules—"Grain * * * held in cars on track for inspection and disposition orders incident thereto at billed destination"—that is, at Willmar, "and disposition orders incident thereto" at Willmar, which

this was not. This was a disposition order to Anoka, "or at point intermediate thereto"—that is, at some point intermediate thereto. They might have given disposition to Willmar. That was not done. It was to a point beyond. That is, if it be admitted that there is force in Mr. Simpson's argument before the publication of this modifying rule of supplement 1, this rule entirely eliminates from the exceptions all cars except those held at destination or at a point intermediate thereto for disposition for official inspection. These cars were neither.

The COURT. Before a car is finally put to the unloading platform or place, but has reached its destination, isn't it awaiting disposition orders?

Mr. FINERTY. Yes, exactly. And disposition orders at a certain point. It says, "disposition at billed destination or at point intermediate thereto." When we hold cars for inspection, they are
96 held on certain tracks from which delivery can not be taken, and if these cars had been held at Willmar for inspection, held on track for inspection, and these plaintiffs had wanted them delivered at some mill at Willmar, we would have had to make that delivery without charge. That would have been disposition incident to official inspection at Willmar, which was the billed destination. But they can not be held at Willmar and ordered to a point beyond without applying this rule, which says that, under these circumstances, "If a car is diverted, reconsigned or forwarded on orders placed with local freight agent or other designated officer after arrival of car at original destination, but before placement for loading, or if the original destination is served by a terminal yard, then after arrival at such terminal yard, a charge of \$5.00 per car will be made."

Mr. BENSON. The question of disposition at terminals is all covered by tariffs; so it is a well established proposition.

Mr. FINERTY. I do not want to argue on academic questions. I would have contended that even without this change in the exceptions, that this exception was limited to the conditions specified on the lower part of page 4, but that would have been a weaker case. But here you have exactly that thing done by a specific tariff provision, published as regulated by law.

The COURT. Your contention is that even though the shipper had said, I am sending those cars to Willmar to be officially inspected,
and after they are inspected I will tell you what to do with
97 them, even in that case it is your contention that there would be a further charge under rule 10.

Mr. FINERTY. Unless what he tells us to do with them was to deliver them at some place at Willmar.

The COURT. Unless he told you by selecting another final destination.

Mr. FINERTY. Yes.

The COURT. Which would appear in the bill of lading.

Mr. FINERTY. Yes. And they say that does not appear to be the case here.

Mr. SIMPSON. Of course the court is familiar with the proposition laid down dozens of times by the Interstate Commerce Commission that in case of any ambiguity the tariff must be construed against the railroad company and in favor of the shipper, and hence if there is any ambiguity in this tariff at all, we are entitled to the benefit of it. And the second point I want to call the court's attention to is what Mr. Mehls admitted on the stand, the preposterous position they take in their construction of the tariff, which they are forced into, and that is, if you hold a car at an official inspection point and reconsign it, it costs you seven dollars, but if you hold it at any other point of reconsignment it costs you five dollars. In other words, they say this reconsigning is an additional charge, as Mr. Mehls testified. He said that in that case, if they held this car at Willmar and sent it on to Anoka before this was canceled, that that would be a
 98 seven-dollar charge, but if they held it at Litchfield, which is not a sampling point, and sent it on to Anoka, it would only be five dollars. That on its face is foolish.

Mr. FINERTY. I don't know whether Mr. Mehls understood your question or not. But that would not be my construction of the tariff.

Mr. SIMPSON. No, you and Mr. Mehls disagree about that.

Mr. FINERTY. But why argue about something that is canceled out of the tariff? Confine yourself to what is in the tariff and have all the ambiguities resolved against us that you want, and you cannot remove the specific commands of the tariff. There are no ambiguities in the tariff.

The COURT. I am still inclined to think that what governs is the answer to the question: Is it the fact that the company has knowledge that the grain is going there for inspection, or is it the fact that it is going there?

Mr. SIMPSON. Your Honor, they must have knowledge, for the reason that the laws of Minnesota make it a sampling point, and every car of grain that goes in there must be officially examined there, under the laws of the State of Minnesota. They must have knowledge that it goes there for that purpose.

The COURT. It might not go there for that purpose. It might go there for market.

Mr. SIMPSON. We might open the case and show there is no market there.

Mr. BENSON. That would not be material anyway.

99 Mr. SIMPSON. But the testimony is that was the reason it was sent there, and the State law makes it an official sampling station, and it must have been known that is what it was sent there for.

Mr. BENSON. On what points does the court want briefs?

The COURT. I understand counsel wanted to submit something on the question of the jurisdiction of the court.

Briefs to be submitted within thirty days.

(Title of cause.)

STIPULATION FOR SETTLED CASE.

It is hereby stipulated, by and between the parties to the above-entitled action, by and through their respective attorneys, that the foregoing is a true, full, and correct transcript of the evidence offered and proceedings had upon the trial of the above-entitled action, except plaintiff's Exhibits A, B, C, and D, which exhibits are in the possession of counsel, and will be filed with the clerk at the time of the settlement of the foregoing proposed case; and the said transcript, together with said exhibits, may be signed, certified, settled, and allowed as and for a settled case herein, containing all evidence offered and proceedings had upon the trial of said case.

HAROLD G. SIMPSON,

Attorney for Plaintiff.

JOHN F. FINERTY and

DILLE, HOKE, KRAUSE & FAEGRE,

Attorneys for Defendants.

100

(Title of cause.)

ORDER SETTLING CASE.

Having examined the foregoing transcript of evidence together with the evidence received on the trial of the above-entitled action, and having found the same conformable to the truth, the same is, pursuant to the foregoing stipulation of the parties, hereby signed, settled, certified, and allowed, as and for a settled case herein, and I hereby certify that the same contains a true and correct transcript of all of the evidence and proceedings had and the rulings upon said trial.

Dated March 6th, 1920.

By the Court,

MATHIAS BALDWIN, *Judge.*

(Title of cause.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter came on to be heard before the court, without a jury, on October 24, 1919, upon issues raised by the complaint of the plaintiff and the answer of the defendants.

Harold G. Simpson, Esq., appeared for the plaintiff; John F. Finerty, Esq., John A. Benson, Esq., and Messrs. Cobb, Wheelwright & Dille appeared for the defendants, and the court, having heard the evidence, the arguments of counsel, and being fully advised in the premises now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT.

I.

That plaintiff is a duly organized and existing corporation and that defendants United States Railroad Administration, Walker D. Hines, Director General of Railroads, during the times hereinafter mentioned were in control and operation of the lines of defendant Great Northern Railway Company, and that defendants are and were at the times herein mentioned common carriers of goods for hire.

II.

That plaintiff made certain shipments of corn, as shown in the following schedule:

III.

Date of shipment.	Car No. and initial.	Point of origin.	Date of payment of charges.
8/2/18	N. H. 79564.....	Council Bluffs, Iowa.....	8/24/18
8/20/18	D. R. G. 66027.....	" " ".....	8/27/18
8/8/18	M. H. 85554.....	" " ".....	8/28/18
8/2/18	N. Y. C. 208119.....	Omaha, Neb.....	8/28/18
8/8/18	Pa. 40371.....	Council Bluffs, Iowa.....	8/29/18
8/13/18	I. C. 172472.....	Omaha, Neb.....	8/29/18
8/13/18	I. C. 21133.....	Council Bluffs, Iowa.....	8/29/18
8/7/18	G. T. 25357.....	" " ".....	8/24/18
8/6/18	Mo. P. 31724.....	" " ".....	8/24/18
7/27/18	Big 4-6195.....	" " ".....	8/13/18
8/7/18	B. M. 1300.....	" " ".....	8/24/18
8/7/18	P. & E. 43929.....	" " ".....	8/24/18
8/6/18	C. G. W. 22222.....	" " ".....	8/24/18
7/30/18	A. C. L. 43725.....	" " ".....	8/16/18
7/31/18	C. R. G. & P. 44344.....	" " ".....	8/20/18
7/20/18	G. T. 102796.....	" " ".....	8/19/18

III.

That all said shipments were billed by the plaintiff to Willmar, Minnesota, for the purpose of there having an official sample made and the grade placed thereon by the Federal and State sampling department and for no other purpose; that Willmar, Minnesota, has been for a number of years an official sampling and inspection point, which defendants well knew, and defendants knew or should have known that said cars of corn were billed to Willmar, Minnesota, solely and only for the purpose of having an official inspection and grade made of the same.

IV.

That on the same day on which plaintiff received the official grade, plaintiff gave disposition orders on said cars to Anoka, Minnesota, by surrendering the original billing and receiving in exchange therefor billing to Anoka, Minnesota.

V.

That the Great Northern Tariff G. F. O. 1240A-I. C. C. N. A4524 and supplement one (1) thereto were the tariffs and the only tariffs which governed or provided for any charge for diversion, re-consigning, or disposition of said shipments; that plaintiff did everything for the proper disposition or diversion of said cars, and that plaintiff paid the lawful and legal freight charges on all said cars.

VI.

That in addition to the lawful and legal charges for the line haul of said cars, defendant exacted, notwithstanding plaintiff's protest, an additional charge of five (5) dollars on each and every one of said cars, on account of the disposition or diversion of said cars
 103 from Willmar to Anoka, Minnesota; that defendants had no tariff authority for making such charge of five (\$5.00) dollars per car, and that said charges have not been refunded.

CONCLUSIONS OF LAW.

That the charge of five (\$5.00) dollars for disposition or diversion, collected from the plaintiff by defendants on each and every one of said cars was illegal and unlawful, and that plaintiff have and recover against defendant herein, United States Railroad Administration, Walker D. Hines, Director General of Railroads, five (\$5.00) dollars on each and every one of said cars, or a total of eighty (\$80.00) dollars, together with five and 75/100 (\$5.75) dollars interest, together with plaintiff's costs and disbursements herein.

Let judgment be entered accordingly.

Dated 6th day of February, 1920.

MATHIAS BALDWIN,
Judge of said Court.

30 days' stay. M. B.

Filed Feb. 10, 1920. Harry Moore, clerk, by C. A. Eck, deputy.

(Title of cause.)

NOTICE OF MOTION FOR NEW TRIAL.

You will please take notice: That at the chambers of Honorable Mathias Baldwin, one of the judges of said court, on the 12th day of March, 1920, at two o'clock p. m., or as soon thereafter as counsel can be heard, the defendants herein will apply to said court
 104 for an order vacating and setting aside the findings herein and granting a new trial in this action and upon all the files and records herein, and said motion will be based upon the following grounds:

1. That said findings and decision of the court made and filed herein are not justified by the evidence.

2. That said findings and decision are contrary to law.
3. That the court erred in denying the defendants' motion made upon the pleadings and the opening statement of plaintiff's counsel to dismiss the case for want of jurisdiction.
4. That the court erred in denying the defendant's motion made at the close of the plaintiff's case to dismiss the case for want of jurisdiction.
5. That the court erred in failing to grant the defendants' motion made at the close of all the testimony to dismiss the case for want of jurisdiction.

You will please take notice that at the same time and place the defendants will apply to the court for an order allowing as a settled case herein the proposed case heretofore served upon you, with such amendments as you may propose and the court allow.

JOHN F. FINERTY and
DILLE, HOKE, KRAUSE & FAEGRE,
Attorneys for Defendants.

105

(Title of cause.)

ORDER DENYING MOTION FOR A NEW TRIAL.

The above-entitled matter, being regularly upon the special term calendar of the above court, came on for hearing before the undersigned, one of the judges of said court, on the 12th day of March, 1920, at 2 o'clock p. m., Messrs. John F. Finerty and Dille, Hoke, Krause & Faegre, appearing as attorneys for defendants, in support of a motion for a new trial, and Mr. Harold G. Simpson appearing as attorney for plaintiff, in opposition thereto. The motion was based upon the settled case and upon the grounds set forth in the moving papers on file. The court having heard the arguments of counsel and having been duly advised in the premises,

It is hereby ordered that said motion be, and the same hereby is, in all respects, denied.

Dated this 12th day of March, 1920.

30 days' stay is hereby granted.

By the court.

MATHIAS BALDWIN,
Judge.

Filed March 12, 1920.

(Title of cause.)

NOTICE OF APPEAL TO SUPREME COURT.

To Harold G. Simpson, Esq., attorney for the above-named plaintiff and to Harry Moore, clerk of said court :

106 Please take notice, that the above-named defendants appeal to the Supreme Court of the State of Minnesota, from that certain order of the said court entered herein, on the 12th day of

March, A. D. 1920, denying defendants' motion for a new trial and from the whole thereof.

Dated this 10th day of April, A. D. 1920.

DILLE, HOKE, KRAUSE & FAEGRE,
JOHN F. FINERTY, and
M. L. COUNTRYMAN,
*Attorneys for Defendants, 300 Security Building,
Minneapolis, Minnesota.*

(Title of cause.)

STIPULATION WAIVING APPEAL BOND.

Whereas the defendants herein have served upon the above-named plaintiff a notice of appeal to the Supreme Court from the order of the trial court herein denying defendants' motion for a new trial; and

Whereas defendants have requested that plaintiff waive the statutory bond upon such appeal,

It is hereby stipulated by and between the parties, by and through their respective attorneys, that a statutory bond on appeal be, and the same hereby is, waived, and it is stipulated that each and all of the proceedings upon appeal may be taken and maintained with the same force and effect as if the defendants had provided and
107 filed an appeal bond in the usual and statutory form. *

LANCASTER, SIMPSON, JUNELL & DORSEY and
HAROLD G. SIMPSON,
Attorneys for Plaintiff.
DILLE, HOKE, KRAUSE & FAEGRE,
JOHN F. FINERTY, and
M. L. COUNTRYMAN,
Attorneys for Defendants.

108 In Supreme Court, State of Minnesota.

MERCHANTS ELEVATOR COMPANY, PLAINTIFF-RESPONDENT,

vs.

GREAT NORTHERN RAILWAY COMPANY and UNITED STATES
Railroad Administration, Walker D. Hines, Director Gen-
eral of Railroads, defendant appellant. } 21910.

It is hereby stipulated by and between the parties to the above entitled action, by and through their respective attorneys, that the time within which the appellant may serve and file the printed record and appellants' brief herein, may be extended by the Supreme Court to and including the 1st day of July, 1920.

DILLE, HOKE, KRAUSE & FAEGRE,
Attorneys for Appellant.
HAROLD G. SIMPSON,
Attorneys for Respondent.

ORDER.

Upon reading and filing the foregoing stipulation,
It is hereby ordered that the time within which appellant may
serve and file the record and appellants' brief herein be, and the same
hereby is, extended to and including the 1st day of July, 1920.
Dated this 8th day of June, 1920.

CALVIN L. BROWN,
Chief Justice.

In Supreme Court, State of Minnesota.

MERCHANTS ELEVATOR COMPANY, PLAINTIFF-RESPONDENT,	} 21910.
<i>vs.</i>	
GREAT NORTHERN RAILWAY COMPANY and UNITED STATES	
Railroad Administration, Walker D. Hines, Director Gen- eral of Railroads, defendant appellant.	

It is hereby stipulated by and between the parties to the above en-
titled action, by and through their respective attorneys, that the time
within which the appellant may serve and file the printed
record and appellant's brief herein, may be extended by the
Supreme Court to and including the 10th day of July, 1920.
Dated this 28th day of June, 1920.

DILLE, HOKE, KRAUSE & FAEGRE,
Attorneys for Appellant.
HAROLD G. SIMPSON,
Attorneys for Respondent.

ORDER.

Upon reading and filing the foregoing stipulation, and the attached
affidavit,
It is hereby ordered, that the time within which appellant may
serve and file the record and appellants' brief herein be, and the same
hereby is, extended to and including the 10th day of July, 1920.
Dated this 1st day of July, 1920.

CALVIN L. BROWN,
Chief Justice.

In Supreme Court, State of Minnesota.

MERCHANTS ELEVATOR COMPANY, PLAINTIFF-RESPONDENT,

vs.

GREAT NORTHERN RAILWAY COMPANY and UNITED STATES
Railroad Administration, Walker D. Hines, Director Gen-
eral of Railroads, defendant appellant.

21910.

STATE OF MINNESOTA,

County of Hennepin, ss:

J. B. Faegre, being first duly sworn, upon oath deposes and says:

That he is one of the attorneys for the appellant in the foregoing
entitled action.

That said action was tried in the trial court by one John F. Fin-
erty, who then had sole charge of said action; that about the time
the appeal herein was taken, said Finerty removed his residence to
Washington, D. C. and, thereupon, one F. G. Dorety, one of the at-
torneys for appellant, took charge of said appeal; that in the prepa-
ration of a record and appellants' brief herein it has become neces-
sary to confer with said Finerty and that delay in the preparation
of said record and appellants' brief has been occasioned by the ab-
sence of said Finerty.

That said appeal brief and record, according to affiant's informa-
tion and belief, can be prepared and made ready, served and filed on
or before July 10, 1920.

This affidavit is made in support of an application for an order ex-
tending the time within which the record and appellants' brief
herein may be served and filed.

J. B. FAEGRE.

110 Subscribed and sworn to before me this 29th day of June,
1920.

[SEAL.]

ALICE H. HANSEN,

Notary Public, Hennepin County, Minnesota.

My commission expires July 6, 1920.

Municipal Court, Hennepin Co.

#28.

21910.

MERCHANTS ELEVATOR COMPANY, RESPONDENT,

vs.

GREAT NORTHERN RAILWAY COMPANY AND UNITED STATES RAILROAD
Administration, Walker D. Hines, Director General of Railroads,
appellants.

HALLAM, J.:

SYLLABUS.

1. Under the applicable tariffs, defendants were not entitled to
exact a reconsignment charge, on shipments of grain, held in car

on track at billed destination for inspection and disposition orders incident to such inspection, and after inspection reconsigned to another station.

2. The State courts have jurisdiction to construe a tariff filed with the Interstate Commerce Commission, even though it has not been officially construed by the Commission.
Affirmed.

OPINION.

Plaintiff shipped sixteen cars of corn over the Great Northern Railway from Omaha, Nebraska, to Willmar, Minnesota. Willmar is an official sampling and inspection point for grain. The cars were billed to Willmar solely for the purpose of inspection and grading, and when they arrived at Willmar they were held on track for that purpose. When plaintiff received the official grade, it reconsigned the cars from Willmar to Anoka. Defendants thereupon exacted a reconsignment charge of \$5 per car. Plaintiff contended that this charge was unlawful and brought this suit to recover the amount paid. The court decided for plaintiff and defendants appeal.

Defendants contend that the charge is authorized by rule 10, which is part of the published tariff known as tariff #1240-A. Rule 10 reads as follows:

"Rule 10. Diversion or reconsignment to points outside switching limits before placement.—If a car is diverted, reconsigned, or reforwarded on orders placed with local freight agent or other designated officer after arrival of car at original destination, but before placement for unloading, or if the original destination is served by a terminal yard, then after arrival at such terminal yard, a charge of \$5.00 per car will be made if car is diverted, reconsigned, or reforwarded to a point outside of switching limits of original destination."

Plaintiff contends that the case is within the exception known as exception (a) as amended by supplement #1. This exception provides that these rules (including rule 10) shall not apply to:

"(a) Grain, seed (field), seed (grass), hay or straw, carloads, held in cars on track for inspection and disposition orders incident thereto at billed destination or at point intermediate thereto."

The cars in controversy were "reconsigned" on orders placed at Willmar after the arrival of the car at that point, and rule 10 authorized the charge of \$5 per car which was exacted by defendant unless the case is brought within the exception above quoted. The whole issue, therefore, is as to the meaning of the language of the exception. We think the case is within the exception. We construe the exception to mean that cars of grain are exempted from rule 10, if held on track at billed destination for inspection and for disposition orders incident to such inspection, and that the "disposition order" may be an order to make disposition by way of reconsignment to another destination. This seems to us the fair meaning of the language. The purpose doubtless is to permit inspection of grain

at inspection points for the purpose of determining the ultimate market and then to dispose of the shipment by reconsignment to such market without extra charge.

It follows that the exaction of the \$5 reconsignment charge was improper.

2. Defendants contend that the courts of this State have no jurisdiction to construe a tariff filed with the Interstate Commerce Commission in advance of its construction by the Interstate Commerce Commission. This question was determined adversely to defendants' contention in *Reliance Elevator Co. v. Chicago, M. & St. P. Ry. Co.*, 139 Minn. 69. Nothing has occurred since that time to change the situation. We find no occasion to overrule our former decision.

Order affirmed.

112 STATE OF MINNESOTA, ss:

Supreme Court.

MERCHANTS ELEVATOR COMPANY, PLAINTIFF AND RESPONDENT,
against

GREAT NORTHERN RAILWAY COMPANY and WALKER D. HINES, Director General of Railroads, defendant- and appellant-.

COSTS AND DISBURSEMENTS.

Statutory costs	\$25.00
Printing record	\$6
Printing brief	\$23.25
Clerk District Court for making return (\$5.00)	\$6
Clerk Supreme Court for filing return (\$10.00)	\$6
— Affidavits (25 cents each)	\$6
Postage and express	\$6
Transcript of case used only for appeal to Supreme Court, and not used in motion for a new trial	\$6
Premium on appeal bond	\$6
— — —	\$6

The above bill of costs and disbursements taxed and allowed Dec. 15th, 1920, at

HERMAN MUELLER,
Clerk Supreme Court of Minnesota,
By P. O. Scow,
Deputy.

STATE OF MINNESOTA,
County of Hennepin, ss:

Harold G. Simpson, being first duly sworn, deposes and says, that he is one of the attorneys for the plaintiff in the above entitled action; that the foregoing is a true and correct statement of the costs and disbursements of said plaintiff in the above entitled proceeding.

and that all of the items of such disbursements have been actually and necessarily paid or incurred therein, by and on behalf of said plaintiff.

HAROLD G. SIMPSON.

Subscribed and sworn to before me, this 11th day of December, 1920.

RUBY M. REITER,

Notary Public, Hennepin County, Minn.

My commission expires November 5, 1926.

Sir: Please take notice. That the costs and disbursements of the plaintiff in the above entitled action will be taxed by and before Herman Mueller, clerk of the Supreme Court of Minnesota, at his office in the capitol, at St. Paul, Minnesota, on Wednesday, the 15th day of December, 1920, at 10 o'clock in the forenoon of said day, and that the foregoing is a statement of the items of costs and disbursements that will then and there be claimed on behalf of said plaintiff and inserted in a judgment in said action that will then and there be entered.

Very respectfully,

HAROLD G. SIMPSON,

Attorney for Plaintiff.

To F. G. DORETY, *Attorney for Defendant.*

(Endorsed:) State of Minnesota, in Supreme Court. Affidavit of disbursements and notice of taxation of costs.

Supreme Court, State of Minnesota.

MERCHANTS ELEVATOR COMPANY, RESPONDENT,

vs.

GREAT NORTHERN RY. CO. AND WALKER D. HINES,
Director General of Railroads, appellant.

} 21910.

Pursuant to an order of court heretofore duly made and entered in this cause it is determined and adjudged municipal order of the court below, herein appealed from, to-wit, of the District Court within and for the county of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant- herein the sum and amount of forty-eight and 20/100 dollars (\$48.20) costs and disbursements in this cause in this court, and that execution may be issued for the enforcement thereof.

Dated and signed Dec. 15th, A. D. 1920.

By the court.

Attest.

[SEAL.]

HERMAN MUELLER,

Clerk.

STATEMENT FOR JUDGMENT.

Statutory costs, \$25.00; printer, \$23.20; clerk, \$—; acknowledgments, \$—; return, \$—; postage and express, \$—; filing mandate, \$—; transcript, \$—; appeal bond, \$—; total, \$48.20.

114 (Endorsed:) State of Minnesota, supreme court. Transcript of judgment.

STATE OF MINNESOTA, ss:

Supreme Court.

I, I. A. Caswell, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said supreme court at the capitol, in the city of St. Paul, ————, A. D. 191—.

Clerk.

STATE OF MINNESOTA:

Supreme Court.

I, Herman Mueller, clerk of the supreme court and custodian of the records thereof, do hereby certify that I have compared the foregoing paper writings, exclusive of endorsements, with the original record, stipulation, order, *stipulation*, *order*, syllabus and opinion, affidavit of costs and disbursements, notice of taxation of costs, proof of service, and copy of judgment with the originals remaining on file in my said office and that the same are full, true, and correct copies of said originals and the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said supreme court, at the State capitol, in the city of St. Paul, on this 12th day of January, 1921.

[Seal of the supreme court, State of Minnesota.]

HERMAN MUELLER,
Clerk of Supreme Court.

(Endorsed:) Original. 21910. State of Minnesota. In supreme court. Merchants Elevator Company, plaintiff - respondent, vs. Great Northern Railway Company & United States Railroad Administration, Walker D. Hines, Director General of Railroads, defend-

ant'appellant-. Stipulation & order. Supreme court. Filed Jun. 8, 1920. H. Mueller, clerk. Dille, Hoke, Krause & Faegre, 300 Security Bldg., Minneapolis.

In the Supreme Court of the United States.
October term, 1920.

GREAT NORTHERN RAILWAY COMPANY U. S. RAILROAD Administration, Walker D. Hines, Director General of Railroads, petitioners,	} No. 686.
<i>vs.</i>	
MERCHANTS ELEVATOR COMPANY, respondent.	

STIPULATION AS TO RETURN TO WRIT OF CERTIORARI.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the Supreme Court of Minnesota to the writ of certiorari granted therein.

JOHN F. FINERTY,
F. G. DORITY,
Counsel for Petitioners.
HAROLD G. SIMPSON,
Counsel for Respondent.

Dated February 28, 1921.

(Stamped:) Supreme court. Filed Mar. 4, 1921. H. Mueller, clerk.

116 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the Supreme Court of the State of Minnesota, greeting:

Being informed that there is now pending before you a suit in which Great Northern Railway Company and United States Railroad Administration, Walker D. Hines, Director General of Railroads, are appellants, and Merchants Elevator Company is respondent, No. 21910, which suit was removed into the said supreme court by virtue of an appeal from the municipal court, county of Hennepin, city of Minneapolis, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said supreme court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the fifth day of February, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

118 (Endorsed:) File No. 28043. Supreme Court of the United States, No. 686, October term, 1920. Great Northern Railway Company et al. vs. Merchants Elevator Company. Writ of certiorari.

119 STATE OF MINNESOTA,
Supreme Court, ss:

To the honorable, to the judges of the Supreme Court of the United States:

In obedience to the command of the within writ I hereby transmit to the Supreme Court of the United States the foregoing stipulation together with the endorsement thereon and the original writ of certiorari in the action entitled: Great Northern Railroad Company, Walker D. Hines, Director General of Railroads, petitioner, vs. Merchants Elevator Company, respondent.

In witness whereof, I hereunto set my hand and affix the seal of said Supreme Court at the city of St. Paul, Minnesota, this 7th day of March, A.D., 1921.

[SEAL.]

HERMAN MUELLER,
Clerk of Supreme Court.

(Stamped:) Office of the Clerk of the Supreme Court, U. S., received Mar. 14, 1921.

120 (Endorsed:) File No. 28,043 Supreme Court U. S., October Term, 1920. Term No. 686. Great Northern Railway Co. et al., petitioners, vs. Merchants Elevator Company. Writ of certiorari and return. Filed March 14, 1921.

